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भारत का राजपत्र
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No. 48] NEW DELHI, NOVEMBER 24— NOVEMBER 30, 2019, SATURDAY/AGRAHAYANA 3— AGRAHAYANA—9, 1941

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 18 सितम्बर, 2019

का.आ. 2006.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970 के पैरा 3 के उप-पैरा (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 की धारा 9 की उप-धारा (3) के खंड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री दीपक कुमार (जन्म तिथि: 1.8.1964) को तत्काल प्रभाव से अथवा अगले आदेशों तक, सुश्री रेनी अजीत के स्थान पर इण्डियन ओवरसीज बैंक के निदेशक मण्डल में निदेशक नामित करती है।

[फा. सं. 6/3/2011-बीओ-I]

संजय कुमार मिश्र, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 18th September, 2019

S.O. 2006.—In exercise of the powers conferred by clause (c) of sub-section (3) of section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, read with sub-paragraph (1) of paragraph 3 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, the Central Government hereby nominates Shri Deepak Kumar (date of birth : 1.8.1964) as Director on the Board of Directors of Indian Overseas Bank with immediate effect and until further orders, *vice* Ms Reeny Ajith.

[F. No. 6/3/2011-BO-I]

SANJAY KUMAR MISHRA, Under Secy.

नई दिल्ली, 1 अक्तूबर, 2019

का. आ. 2007.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970 के पैरा 8 के उप-पैरा (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 की धारा 9 की उप-धारा (3) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतदद्वारा, इलाहाबाद बैंक के प्रबंध निदेशक एवं मुख्य कार्यकारी अधिकारी श्री सीएच. एस. एस. मल्लिकार्जुन राव (जन्म तिथि 22.1.1962) को कार्यभार ग्रहण करने की तारीख से दिनांक 18.9.2021 तक अथवा अगले आदेशों तक, जो भी पहले हो, पंजाब नैशनल बैंक में प्रबंध निदेशक एवं मुख्य कार्यकारी अधिकारी के पद पर नियुक्त करती है।

[फा. सं. 4/2/2018-बीओ-I]

एस. आर. मेहर, उप सचिव

New Delhi, the 1st October, 2019

S.O. 2007.—In exercise of powers conferred by the proviso to clause (a) of sub-section (3) of section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, read with sub-paragraph (1) of paragraph 8 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, Central Government hereby posts Shri Ch. S. S. Mallikarjuna Rao (date of birth: 22.1.1962), Managing Director and Chief Executive Officer in Allahabad Bank as Managing Director and Chief Executive Officer in Punjab National Bank, with effect from the date of assumption of office, till 18.9.2021 or until further orders, whichever is earlier.

[F. No. 4/2/2018-BO-I]

S. R. MEHAR, Dy. Secy.

नई दिल्ली, 21 अक्तूबर, 2019

का.आ. 2008.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970 के खंड (3) के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 (1970 का 5) की धारा 9 की उप-धारा (3) के खंड (ज) और उप-धारा (3-क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री गौतम गुहा (जन्म तिथिः 16.1.1955) को पुन: नामित किए जाने की अधिसूचना की तारीख से एक वर्ष की अवधि के लिए या बैंक के आमेलन, अर्थात 31.3.2020 तक अथवा अगले आदेशों तक, जो भी पहले हो, इलाहाबाद बैंक के निदेशक मण्डल में अंशकालिक गैर-सरकारी निदेशक के पद पर पुन: नामित करती है।

[फा. सं. 6/1/2018-बीओ-I (खंड-III)]

एस. आर. मेहर, उप सचिव

New Delhi, the 21st October, 2019

S.O. 2008.—In exercise of the powers conferred by clause (h) of sub-section (3) and sub-section (3-A) of section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) read with sub-clause (1) of clause (3) of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, Central Government hereby re-nominates Shri Gautam Guha (DoB: 16.1.1955) as part-time non-official director on the Board of Directors of Allahabad Bank, from the date of notification of his re-nomination for a period of one year, or until the amalgamation of the bank *i.e.* 31.3.2020, or until further orders, whichever is the earliest.

[F. No. 6/1/2018-BO-I (Vol.III)]

S. R. MEHAR, Dy. Secy.

नई दिल्ली, 21 अक्तूबर, 2019

का.आ. 2009.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970 के खंड (3) के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 (1970 का 5) की धारा 9 की उप-धारा (3) के खंड (ज) और उप-धारा (3-क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री पद्मनाभन विट्टल दास (जन्म तिथिः 2.5.1950) को पुनः नामित किए जाने की अधिसूचना की तारीख से एक वर्ष की अवधि के लिए या बैंक के आमेलन, अर्थात 31.3.2020 तक अथवा अगले आदेशों तक, जो भी पहले हो, इंडियन बैंक के निदेशक मण्डल में अंशकालिक गैर-सरकारी निदेशक के पद पर पुनः नामित करती है।

[फा. सं. 6/1/2018-बीओ-I (खंड-III)]

एस. आर. मेहर, उप सचिव

New Delhi, the 21st October, 2019

S.O. 2009.—In exercise of the powers conferred by clause (h) of sub-section (3) and sub-section (3-A) of section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) read with sub-clause (1) of clause (3) of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, Central Government hereby re-nominates Shri Padmanaban Vittal Dass (DoB: 2.5.1950) as part-time non-official director on the Board of Directors of Indian Bank, from the date of notification of his re-nomination for a period of one year, or until the amalgamation of the bank *i.e.* 31.3.2020, or until further orders, whichever is the earliest.

[F. No. 6/1/2018-BO-I (Vol.III)]

S. R. MEHAR, Dy. Secy.

नई दिल्ली, 21 अक्तूबर, 2019

का.आ. 2010.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970 के खंड (3) के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 (1970 का 5) की धारा 9 की उप-धारा (3) के खंड (ज) और उप-धारा (3-क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, सुश्री वंदना कुमारी जेना (जन्म तिथिः 10.7.1955) को पुनः नामित किए जाने की अधिसूचना की तारीख से एक वर्ष की अवधि के लिए या बैंक के आमेलन, अर्थात 31.3.2020 तक अथवा अगले आदेशों तक, जो भी पहले हो, सिंडिकेट बैंक के निदेशक मण्डल में अंशकालिक गैर-सरकारी निदेशक के पद पर पुनः नामित करती है।

[फा. सं. 6/1/2018-बीओ-I (खंड-III)]

एस. आर. मेहर, उप सचिव

New Delhi, the 21st October, 2019

S.O. 2010.—In exercise of the powers conferred by clause (h) of sub-section (3) and sub-section (3-A) of section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) read with sub-clause (1) of clause (3) of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, Central Government hereby re-nominates Ms Vandana Kumari Jena (DoB: 10.7.1955) as part-time non-official director on the

Board of Directors of Syndicate Bank, from the date of notification of her re-nomination for a period of one year, or until the amalgamation of the bank *i.e.* 31.3.2020, or until further orders, whichever is the earliest.

[F. No. 6/1/2018-BO-I (Vol.III)]

S. R. MEHAR, Dy. Secy.

नई दिल्ली, 21 अक्तूबर, 2019

का.आ. 2011.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970 के खंड (3) के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 (1970 का 5) की धारा 9 की उप-धारा (3) के खंड (ज) और उप-धारा (3-क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री जी. रमेश (जन्म तिथिः 25.6.1956) को पुन: नामित किए जाने की अधिसूचना की तारीख से एक वर्ष की अवधि के लिए या बैंक के आमेलन, अर्थात 31.3.2020 तक अथवा अगले आदेशों तक, जो भी पहले हो, सिंडिकेट बैंक के निदेशक मण्डल में अंशकालिक गैर-सरकारी निदेशक के पद पर पुन: नामित करती है।

[फा. सं. 6/1/2018-बीओ-I (खंड-III)]

एस. आर. मेहर, उप सचिव

New Delhi, the 21st October, 2019

S.O. 2011.—In exercise of the powers conferred by clause (h) of sub-section (3) and sub-section (3-A) of section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) read with sub-clause (1) of clause (3) of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, Central Government hereby re-nominates Shri G. Ramesh (DoB: 25.6.1956) as part-time non-official director on the Board of Directors of Syndicate Bank, from the date of notification of his re-nomination for a period of one year, or until the amalgamation of the bank *i.e.* 31.3.2020, or until further orders, whichever is the earliest.

[F. No. 6/1/2018-BO-I (Vol.III)]

S. R. MEHAR, Dy. Secy.

नई दिल्ली, 21 अक्तूबर, 2019

का.आ. 2012.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970 के खंड (3) के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 (1970 का 5) की धारा 9 की उप-धारा (3) के खंड (ज) और उप-धारा (3-क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री एस. रघुनाथ (जन्म तिथिः 24.5.1957) को पुन: नामित किए जाने की अधिसूचना की तारीख से एक वर्ष की अवधि के लिए या बैंक के आमेलन, अर्थात 31.3.2020 तक अथवा अगले आदेशों तक, जो भी पहले हो, केनरा बैंक के निदेशक मण्डल में अंशकालिक गैर-सरकारी निदेशक के पद पर पुन: नामित करती है।

[फा. सं. 6/1/2018-बीओ-I (खंड-III)]

एस. आर. मेहर, उप सचिव

New Delhi, the 21st October, 2019

S.O. 2012.—In exercise of the powers conferred by clause (h) of sub-section (3) and sub-section (3-A) of section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) read with sub-clause (1) of clause (3) of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, Central Government hereby re-nominates Shri S. Raghunath (DoB: 24.5.1957) as part-time non-official director on the Board of Directors of Canara Bank, from the date of notification of his re-nomination for a period of one year, or until the amalgamation of the bank *i.e.* 31.3.2020, or until further orders, whichever is the earliest.

[F. No. 6/1/2018-BO-I (Vol.III)]

S. R. MEHAR, Dy. Secy.

नई दिल्ली, 21 अक्तूबर, 2019

का.आ. 2013.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1980 के खंड (3) के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1980 (1980 का 40) की धारा 9 की उप-धारा (3) के खंड (ज) और उप-धारा (3-क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, सुश्री माला श्रीवास्तव (जन्म तिथिः 4.11.1954) को पुन: नामित किए जाने की अधिसूचना की तारीख से एक वर्ष की अवधि के लिए या बैंक के आमेलन, अर्थात 31.3.2020 तक अथवा अगले आदेशों तक, जो भी पहले हो, ओरियंटल बैंक आफ कामर्स के निदेशक मण्डल में अंशकालिक गैर-सरकारी निदेशक के पद पर पुन: नामित करती है।

[फा. सं. 6/1/2018-बीओ-I (खंड-III)]

एस. आर. मेहर, उप सचिव

New Delhi, the 21st October, 2019

S.O. 2013.—In exercise of the powers conferred by clause (h) of sub-section (3) and sub-section (3-A) of section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980) read with sub-clause (1) of clause (3) of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1980, Central Government hereby re-nominates Ms Mala Srivastava (DoB: 4.11.1954) as part-time non-official director on the Board of Directors of Oriental Bank of Commerce, from the date of notification of her re-nomination for a period of one year, or until the amalgamation of the bank *i.e.* 31.3.2020, or until further orders, whichever is the earliest.

[F. No. 6/1/2018-BO-I (Vol.III)]

S. R. MEHAR, Dy. Secy.

नई दिल्ली, 21 अक्तूबर, 2019

का.आ. 2014.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970 के खंड (3) के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 (1970 का 5) की धारा 9 की उप-धारा (3) के खंड (ज) और उप-धारा (3-क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री बिजू वरक्के (जन्म तिथिः 22.12.1965) को अधिसूचना की तारीख से एक वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, बैंक आफ बड़ौदा के निदेशक मण्डल में अंशकालिक गैर-सरकारी निदेशक के पद पर पुन: नामित करती है।

[फा. सं. 6/1/2018-बीओ-I (खंड-III)]

एस. आर. मेहर, उप सचिव

New Delhi, the 21st October, 2019

S.O. 2014.—In exercise of the powers conferred by clause (h) of sub-section (3) and sub-section (3-A) of section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) read with sub-clause (1) of clause (3) of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, Central Government hereby re-nominates Shri Biju Varkkey (DoB: 22.12.1965) as part-time non-official director on the Board of Directors of Bank of Baroda, for a period of one year from the date of this notification, or until further orders, whichever is earlier.

[F. No. 6/1/2018-BO-I (Vol.III)]

S. R. MEHAR, Dy. Secy.

नई दिल्ली, 21 अक्तूबर, 2019

का.आ. 2015.—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970 के खंड (3) के उप-खंड (1) के साथ पठित बैंककारी कंपनी (उपक्रमों का अर्जन और अंतरण) अधिनियम, 1970 (1970 का 5) की धारा 9 की उप-धारा (3) के खंड (ज) और उप-धारा (3-क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, श्री कृष्णप्पा रमेश (जन्म तिथिः

13.1.1957) को पुन: नामित किए जाने की अधिसूचना की तारीख से एक वर्ष की अवधि के लिए या बैंक के आमेलन, अर्थात 31.3.2020 तक अथवा अगले आदेशों तक, जो भी पहले हो, यूनियन बैंक आफ इंडिया के निदेशक मण्डल में अंशकालिक गैर-सरकारी निदेशक के पद पर पुन: नामित करती है।

[फा. सं. 6/1/2018-बीओ-I (खंड-III)]

एस. आर. मेहर, उप सचिव

New Delhi, the 21st October, 2019

S.O. 2015.—In exercise of the powers conferred by clause (h) of sub-section (3) and sub-section (3-A) of section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) read with sub-clause (1) of clause (3) of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, Central Government hereby re-nominates Shri Krishnappa Ramesha (DoB: 13.1.1957) as part-time non-official director on the Board of Directors of Union Bank of India, from the date of notification of his re-nomination for a period of one year, or until the amalgamation of the bank *i.e.* 31.3.2020, or until further orders, whichever is the earliest.

[F. No. 6/1/2018-BO-I (Vol.III)]

S. R. MEHAR, Dy. Secy.

परमाणु ऊर्जा विभाग

(परमाणु खनिज अन्वेषण एवं अनुसंधान निदेशालय)

हैदराबाद, 17 सितम्बर, 2019

का.आ. 2016.—जबकि सेवाओं या लाभों या छूट प्रदान करने हेतु पहचान दस्तावेज़ के रूप में आधार कार्ड का उपयोग सरकारी वितरण प्रक्रिया को सरल, पारदर्शिता तथा दक्ष बनाता है तथा यह लाभार्थियों को सुविधाजनक तथा सुगम तरीके से अपनी हकदारी को सीधे प्राप्त करने में समर्थ बनाता है तथा आधार किसी की पहचान सिद्ध करने के लिए प्रस्तुत करने वाले बहु दस्तावेजों को जरुरत को ख़त्म करता है ।

और जबकि नीचे की तालिका में विनिर्दिष्ट सेवाओं, लाभों तथा छूट में भारत की समेकित निधि से हुए व्यय/ वित्तपोषण शामिल है :

तालिका

क्र सं	सेवा का नाम	प्रत्यक्ष लाभ हस्तांतरण के उद्देश्य हेतु पत्रा लाभार्थी / सर्विस इनेबलर्स
1.	एएमडी छात्रवृत्ति कार्यक्रम – एएमडीएसपी	इस प्रकार का भुगतान प्राप्त करने वाले विद्यार्थीगण
2	एएमडी - प्रोजेक्ट समर ट्रेनिंग प्रोग्राम तथा विज्ञान एवं वाद-विवाद प्रतियोगिता	भुगतान प्राप्त करने वाले विद्यार्थी तथा कर्मचारी

अतः, आधार (वित्तीय तथा अन्य छूट, लाभ तथा सेवाओं के लक्षित वितरण) अधिनियम, 2016 (2016 का 18) की धारा 7 के प्रावधानों के अनुसरण में परमाणु ऊर्जा विभाग, परमाणु खनिज अन्वेषण एवं अनुसंधान निदेशालय (पखनि) में केंद्र सरकार एत्तद्वारा निम्नलिखित को अधिसूचित करती है, ---

1. (1) उपर्युक्त तालिका में विनिर्दिष्ट योजनाओं के तहत लाभ लेने के इच्छुक व्यक्तियों (पात्र लाभार्थी या सर्विस इनेबलर्स) के लिए आधार रखना या आधार प्रमाणीकरण करने का प्रमाण प्रस्तुत करना एत्तद्वारा अपेक्षित है |

(2) उपर्युक्त तालिका में विनिर्दिष्ट योजनाओं के तहत लाभ लेने के लिए इच्छुक व्यक्ति जिनका अभी तक आधार के लिए पंजीकृत नहीं हुआ है, उन्हें आधार के लिए आवेदन करना होगा बशर्ते वह उपर्युक्त अधिनियम की धारा 3 के प्रावधानों के अनुसार आधार लेने के लिए पात्र हो तथा ऐसा व्यक्ति आधार के लिए पंजीकृत होने के लिए आधार नामांकन के किसी केंद्र (www.uidai.gov.in) पर सूची उपलब्ध) में जा सकते हैं |

उस व्यक्ति को आधार मिलने तक उपर्युक्त योजनाओं के तहत लाभ निम्नलिखित दस्तावेजों को प्रस्तुत करने पर दिए जाएंगे :

(क) (i) आधार पंजीयन आईडी पर्ची यदि वह पंजीकृत हुआ/हुई है; अथवा

(ii) पैराग्राफ 1 के उप-पैराग्राफ (2) में विनिर्दिष्ट अनुसार आधार पंजीयन के लिए किए गए अनुरोध की एक प्रति तथा

(ख) (i) फोटो सहित बैंक पासबुक; या (ii) मतदाता पहचान-पत्र (iii) पैन कार्ड; या

(ग) (iv) पासपोर्ट या (v) ड्राइविंग लाइसेंस; या (vi) राशन कार्ड; या (vii) सरकार द्वारा जारी फोटो पहचान पत्र

इसके अतिरिक्त पखनि की संबंधित एजेंसी के अधिकारी द्वारा उनसे संबंधित योजनाओं के लिए उपर्युक्त दस्तावेजों की जाँच की जाएगी ।

2.(1) लाभों के सुविधाजनक रूप से तथा बिना जल्दीबाजी प्रदान करने के लिए पखनि की संबंधित एजेंसीयां सभी व्यवस्थाएं करेंगी तथा उपर्युक्त योजनाओं के तहत लाभों को प्राप्त करने के लिए सर्विस इनेबलर्स या लाभार्थियों को आधार की जरुरत के बारे में जागरुक करने हेतु नोटिस के माध्यम से व्यापक प्रचार-प्रसार करेंगी तथा यदि वे पंजीकृत नहीं हैं तो उन्हें समीप के पंजीयन केन्द्रों में पंजीकृत करवाने हेतु सलाह देंगी |

3. यह अधिसूचना प्रकाशन की तारीख से लागू होगी ।

[सं. पखनि-535/1/2019/प्रशा.V/1424]

एम. बी. वर्मा, निदेशक, पखनि

DEPARTMENT OF ATOMIC ENERGY

(ATOMIC MINERALS DIRECTORATE FOR EXPLORATION AND RESEARCH)

Hyderabad, the 17th September, 2019

S.O. 2016.—Whereas the use of Aadhaar as identity document for delivery of services or benefits or subsidies simplifies the Government delivery processes, brings in transparency and efficiency and enables beneficiaries to get their entitlement directly in a convenient and seamless manner and Aadhaar obviates the need for producing multiple documents to prove one's identity.

And whereas the services, benefits and subsidies specified in the Table below involve expenditure incurred/funded from the Consolidated Fund of India.

TABLE

Sl. No.	Name of the Service	Eligible beneficiaries / Service enables for the purpose of Direct Benefit Transfer
1	AMD Studentship Programme - AMDSP	Students who are recipient of such payment
2	AMD – Project Summer Training Programme and Science and Elocution Competition	Students and employees who are recipients of such payment

Now, therefore, in pursuance of the provisions of section 7 of the Aadhaar (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Act, 2016 (18 of 2016) (hereinafter referred to as the said Act), the Central Government in the Department of Atomic Energy, Atomic Minerals Directorate for Exploration and Research hereby notified the following, namely : —

1. (1) Individuals (eligible beneficiaries or service enablers) desirous of availing benefits under the schemes specified in the Table above are hereby required to furnish proof of possession of Aadhaar or undergo Aadhaar authentication.

(2) An individual desirous of availing benefits under the schemes specified in the above Table and is not yet enrolled for Aadhaar shall have to apply for Aadhaar in case he / she is entitled to obtain Aadhaar

as per the provisions of section 3 of said Act and such individual may visit any Aadhaar enrolment center (list available at www.uidai.gov.in) to get enrolled for Aadhaar : —

Provided that till the time Aadhaar is assigned to the individual, benefits under the said schemes shall be given to the individual, subject to the production of the following documents, namely : —

(a) (i) Aadhaar enrolment ID slip if he or she has enrolled: or

(ii) a copy of request made for Aadhaar enrolment as specified in sub-paragraph (2) of paragraph 1; and

(b) (i) Bank Passbook along with Photo; or (ii) Voter's ID card; or (iii) PAN card; or (iv) Passport; or (v) Driving License; or (vi) Ration card; or (vii) Photo ID card issued by the Government;

Provided further that the above said documents shall be checked by an officer of the concerned agency of the AMD, for their respective scheme.

2. (1) In order to provide convenient and hassle free delivery of benefits, the concerned agencies of AMD shall make all the arrangements including wide publicity through notices shall be given to service enablers or beneficiaries to make them aware of the requirement of Aadhaar to receive the benefits under the said schemes and in case they are not enrolled, they may be advised to get themselves enrolled at the nearest enrolment centers.

3. This notification shall come into effect from the date of its publication.

[No. AMD-535/1/2019/ADM.V/1424]

M. B.VERMA, Director, AMD

मानव संसाधन विकास मंत्रालय

(उच्चतर शिक्षा विभाग)

(राजभाषा प्रभाग)

नई दिल्ली, 11 नवम्बर, 2019

का.आ. 2017.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम 4 के अनुसरण में, मानव संसाधन विकास मंत्रालय (स्कूल शिक्षा एवं साक्षरता विभाग) के अंतर्गत निम्नलिखित कार्यालयों को, ऐसे कार्यालय के रूप में, जिसके 80 प्रतिशत से अधिक कर्मचारी-वृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है:—

1.	केंद्रीय विद्यालय, नं.-2, रेल डिब्बा कारखाना हुसैनपुर, कपूरथला, पंजाब - 144602
2.	केंद्रीय विद्यालय, (सीमा सुरक्षा बल) रामपुरा, फाजिल्का, पंजाब - 152123
3.	केंद्रीय विद्यालय, मथाना, मार्फत सरकारी प्राथमिक विद्यालय, सैक्टर-4ए, शहरी संपदा जिला – कुरूक्षेत्र, हरियाणा-136118
4.	केंद्रीय विद्यालय कोप्पल, सरकारी मॉडल उच्चतर प्राइमरी स्कूल कैंपस, कोप्पल-583231 कर्नाटक
5.	केंद्रीय विद्यालय मैसूरू, जी आई टी बी प्रेस कॉम्प्लेक्स, पोस्ट ऑफिस सिद्धार्थ नगर, मैसूरू - 570011 कर्नाटक
6.	केंद्रीय विद्यालय सी.आर.पी.एफ. येलहंका, दोड्डाबल्लापुर मेन रोड, बेंगलुरू – 560064
7.	केंद्रीय विद्यालय हावेरी, डी आई ई टी कैम्पस, करजगी रोड, हावेरी, कर्नाटक -581110
8.	केंद्रीय विद्यालय नं. 3 बेलगावी, लक्ष्मी नगर, भैरवनाथ नगर, पोस्ट ऑफिस मच्छे, बेलगावी- 590014 कर्नाटक

9.	केंद्रीय विद्यालय क्र 2, मंगलूरू, एककूर, कंकनाडी पोस्ट, मंगलूरू-575002
10.	केंद्रीय विद्यालय रायचूर, आशापुर रोड रायचुर-584101 कर्नाटक
11.	केंद्रीय विद्यालय तुमकूरू, अमलापुर अरकेरे पोस्ट, कोरट्गेरे मेन रोड, तुमकुरू-572106 कर्नाटक
12.	केंद्रीय विद्यालय विजयपुरा अफ़जलपुर टक्के, विजयपुरा (बीजापुर) – 586102 कर्नाटक
13.	केंद्रीय विद्यालय कार्वार नेवेल बेस, पी ओ अरगा, कार्वार 581324 कर्नाटक
14.	केंद्रीय विद्यालय कोडगु, नए कोर्ट भवन के सामने, विद्यानगर, मड़ीकेरी-571201, कर्नाटक
15.	केंद्रीय विद्यालय बागलकोट, सं. 63-अ, वृन्दावन सेक्टर नवानगर, बागलकोट-587103 कर्नाटक
16.	केंद्रीय विद्यालय चेन्नपटना, मार्फत सेरिकल्चर प्रशिक्षण स्कूल वंदरागगुप्पे गांव, पोस्ट ऑफिस बेंगलुरू – मैसूरू मार्ग, चेन्नपटना तालुक, रामनगर जिला – 562161, कर्नाटक
17.	केंद्रीय विद्यालय केंद्रीय चिक्कमगलुरू, डाइट बिल्डिंग कैम्पस रामनहल्ली, चिक्कमगलुरू-577101
18.	केंद्रीय विद्यालय शिवमोगा, वड्डिनकोप्प के पास, संतेकडूरू, एन आर पुर/ शृंगेरी हाई वे रोड, निदिगे पोस्ट, शिवमोगा, कर्नाटक – 577222
19.	केंद्रीय विद्यालय के आर पुरम, डीज़ल लोको शैड कृष्णराजपुरम, बेंगलुरू - 560036 कर्नाटक
20.	केंद्रीय विद्यालय चामराजनगर, मादापुर पोस्ट, चामराजनगर- 571313 कर्नाटक
21.	केंद्रीय विद्यालय मंड्या बी होसुरू कालोनी केरगोडु होबली, मंड्या तालुक/जिला -571402 कर्नाटक
22.	केंद्रीय विद्यालय चिकोडी, विधायक राजकीय मॉडल विद्यालय भवन, विपरीत पंचायत तालुक कार्यालय, निकट मिनी विधान सौधा, चिकोड़ी, जिला बेलगांव-591201 कर्नाटक
23.	केंद्रीय विद्यालय उडुपी डी आई ई टी केंपस, आई टी आई कॉलेज के बगल में, प्रगति नगर, अलेवूर मणिपाल, पोस्ट उडुपी -576104 कर्नाटक
24.	केंद्रीय विद्यालय दावणगेरे, अवरगोल्ला, करूर चिरंजीवी एग्रो फूड के सामने, कोण्डाजी रोड दावणगेरे - 577589 कर्नाटक
25.	केंद्रीय विद्यालय एम ई जी एवं केंद्र, सेंट जॉन्स चर्च मार्ग, बेंगलुरू-560042 कर्नाटक
26.	केंद्रीय विद्यालय, वायु सेना स्टेशन हकीमपेट, सिकंदराबाद - 500 014 (तेलंगाना)
27.	केंद्रीय विद्यालय, एनटीपीसी रामगुंडम, ज्योतिनगर – 505215 (तेलंगाना)
28.	केंद्रीय विद्यालय नं. 2, विजयवाड़ा, मालडिब्बा कारखाना कॉलोनी, गुंटुपल्ली, विजयवाड़ा- 521241 (आंध्र प्रदेश)
29.	केंद्रीय विद्यालय, ओएनजीसी, बेस कॉम्पलेक्स, लालाचेरूवु, राजमहेन्द्री – 533106 (आंध्र प्रदेश)
30.	केंद्रीय विद्यालय, मछलीपट्टणम, बाईपास रोड, गोपाल नगर, कृष्णा जिला - 521 001 (आंध्र प्रदेश)
31.	केंद्रीय विद्यालय, एनएफसी नगर, घटकेसर, मेड़चल – मलकाजगिरि, जिला- सिकंदराबाद - 501 301 (तेलंगाना)
32.	केंद्रीय विद्यालय, बोप्पापुरम रोड, वेंकटगिरी, नेल्लूर जिला- 524 404 (आंध्र प्रदेश)

33.	केंद्रीय विद्यालय, एलुरू, गोपन्नपालेम, डेंडुलुरू मंडल, जिला – पश्चिम गोदावरी - 534450 (आंध्र प्रदेश)
34.	केंद्रीय विद्यालय, कड़पा, एसटीएम टाउनशिप के निकट, न्यू रिम्स के पास कड़पा-516 001 (आंध्र प्रदेश)
35.	केंद्रीय विद्यालय, करीमनगर, एल एम डी अलुगुनूर, करीमनगर- 505 527 (तेलगांना)
36.	केंद्रीय विद्यालय, मिर्यालगुडा, एनएसपी ग्राउंड के सामने, जिला – नलगोंडा- 508 207 (तेलंगाना)
37.	केंद्रीय विद्यालय, महबूबाबाद, एस सी गर्ल्स हॉस्टल 'बी' नन्दामुरी नगर कॉलोनी, महबूबाबाद – 506 101 (तेलंगाना)
38.	केंद्रीय विद्यालय, तेनाली, के एस एम हाई स्कूल, चेंचुपेट, तेनाली, गुंटूर जिला – 522 202 (आंध्र प्रदेश)
39.	केंद्रीय विद्यालय, मार्फत एम पी पी स्कूल, सुभाष नगर, सिर्सिल्ला – 501 301 (तेलंगाना)
40.	केंद्रीय विद्यालय, मार्फत मधु मलंचा जूनियर कॉलेज, बेल्ला गांव, शक्कर नगर, पोस्ट – बोधन - 503180 (तेलंगाना)
41.	केंद्रीय विद्यालय, झरासंगम, (जिला) संगारेड्डी – 502 246 (तेलंगाना)
42.	केंद्रीय विद्यालय, राजमपेट, सरकारी जूनियर कॉलेज परिसर के पीछे, सरस्वतीपुरम, राजमपेट, कड़पा (जिला) 516 115 (आंध्र प्रदेश)
43.	केंद्रीय विद्यालय, काकीनाडा, वल्सापाकला – 533 005 (आंध्र प्रदेश)
44.	केंद्रीय विद्यालय, मंचिर्याल, डोर नं. 12-597/3, वेल्लमपल्ली चौरस्ता, मंचिर्याल – 504 208 (तेलंगाना)
45.	केंद्रीय विद्यालय, सत्तेनपल्ली, एम आर ओ ऑफिस के सामने, मुख्य मार्ग, जिला-गुंटूर – 522 403 (आंध्र प्रदेश)
46.	केंद्रीय विद्यालय, मलकापुरम, गांधीग्राम पोस्ट, विशाखापत्तनम – 530 005 (आंध्र प्रदेश)
47.	केंद्रीय विद्यालय, नं. 1, श्रीविजयनगर, 104 एरिया इंडस्ट्रियल इस्टेट, विशाखापत्तनम – 530 007 (आंध्र प्रदेश)
48.	केंद्रीय विद्यालय, नं. 2, श्रीविजयनगर, 104 एरिया इंडस्ट्रियल इस्टेट, विशाखापत्तनम – 530 007 (आंध्र प्रदेश)
49.	केंद्रीय विद्यालय, नं. 1, नौसेनाबाग, विशाखापत्तनम- 530005 (आंध्र प्रदेश)
50.	केंद्रीय विद्यालय, नं. 2, नौसेनाबाग, विशाखापत्तनम- 530005 (आंध्र प्रदेश)
51.	केंद्रीय विद्यालय, वाल्टेयर, आंध्र ज्योति प्रेस के पीछे, ताडीचेट्लापालेम, विशाखापत्तनम – 530 016 (आंध्र प्रदेश)
52.	केंद्रीय विद्यालय, इस्पात संयंत्र, विशाखापत्तनम – 530 032
53.	केंद्रीय विद्यालय, एन ए डी विशाखापत्तनम, एन ए डी (पोस्ट) विशाखापत्तनम – 530 009 (आंध्र प्रदेश)
54.	केंद्रीय विद्यालय, भा.नौ.पो. कलिंग, भीमुनिपट्टनम, विशाखापत्तनम - 531 163 (आंध्र प्रदेश)
55.	केंद्रीय विद्यालय, श्रीकाकुलम, पेद्दापाडु, ईनाडु ऑफिस के पास, एन एच-16, श्रीकाकुलम- 532 401 (आंध्र प्रदेश)
56.	केंद्रीय विद्यालय, विजयनगरम, सात मंदिर के पास, बाबामेट्टा, विजयनगरम- 535 002 (आंध्र प्रदेश)
57.	केंद्रीय विद्यालय, राजमपल्ली, गोइरालिकोंडा तिरूमलनाधा स्वामी मंदिर परिसर, राजमपल्ली गांव, पेददरविडु मंडल, मरकापुर, डिवीजन, पोस्ट चेतलमितला, जिला प्रकाशम- 523 320 (आंध्र प्रदेश)

58.	केंद्रीय विद्यालय, भुवनगिरि, ए एल एन रेड्डी मेमोरियल गवर्नमेंट गर्ल्स जूनियर कॉलेज, बंजारा हिल्स यदादरी भुवनगिरि जिला- 508 116 (तेलंगाना)
59.	केंद्रीय विद्यालय, आदिलाबाद, निर्मिति केंद्र, दसनापुर, पुरातन डी एम हाउस, आदिलाबाद- 504 001
60.	केंद्रीय विद्यालय, औरंगाबाद, पोस्ट- जोगिया, जिला- औरंगाबाद – 824101
61.	केंद्रीय विद्यालय, रेल पहिया कारखाना, बेला (सारण), जिला- सारण (बिहार) - 841221
62.	केंद्रीय विद्यालय, हरनौत सवारी डिब्बा, मरम्मत कारखाना, हरनौत - 803110
63.	केंद्रीय विद्यालय, सी.आर.पी.एफ. झपहाँ, मुजफ्फरपुर (बिहार) – 842004
64.	केंद्रीय विद्यालय, शंकरपुरी, पोस्ट- तकिया, सासाराम, जिला- रोहतास (बिहार)- 821113
65.	केंद्रीय विद्यालय, शाहदरा, ब्लॉक – 6, खिचड़ीपुर, दिल्ली - 91

[फा. सं. 11011-2/2018-रा.भा.ए.]

संजय कुमार सिन्हा, संयुक्त सचिव

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Department of Higher Education)

(O. L. UNIT)

New Delhi, the 11th November, 2019

S.O. 2017.—In pursuance of sub-rule (4) of rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the following offices under the Ministry of Human Resource Development, (Department of School Education & Literacy) as office, whose more than 80% members of the staff have acquired working knowledge of Hindi:—

1.	KENDRIYA VIDYALAYA, NO-2, RCF, HUSSAINPUR, KAPURTHALA, PUNJAB – 144602
2.	KENDRIYA VIDYALAYA (BSF), RAMPURA, FAZILKA, PUNJAB- 152123
3.	KENDRIYA VIDYALAYA, MATHANA, C/O GOVT. PRIMARY SCHOOL, SECT-4A, URBAN ESTATE, DISTT- KURUKSHETRA, HARYANA-136118
4.	KENDRIYA VIDYALAYA KOPPAL, GOVT. MODAL HIGHER PRIMARY SCHOOL CAMPUS, KOPPAL -583231 KARNATAKA
5.	KENDRIYA VIDYALAYA MYSURU, GITB PRESS COMPLEX, PO SIDHARTHA NAGAR, MYSURU -570011 KARNATAKA
6.	KENDRIYA VIDYALAYA CRPF YELAHANKA, DODDABALLAPUR MAIN ROAD, BENGALURU -560064
7.	KENDRIYA VIDYALAYA HAVERI, DIET CAMPUS, KARJAGI ROAD, HAVERI, KARNATAKA PIN CODE -581110
8.	KENDRIYA VIDYALAYA NO. 3 BELAGAVI, LAXMI NAGAR, BHAIRAVNATH NAGAR, PO MACHHE, BELAGAVI -590014 KARNATAKA
9.	KENDRIYA VIDYALAYA NO. 2 MANGALURU, EKKUR, KANKANADY POST, MANGALURU -575002
10.	KENDRIYA VIDYALAYA RAICHUR, ASHAPUR ROAD RAICHUR -584101 KARNATAKA
11.	KENDRIYA VIDYALAYA TUMAKURU, AMALAPURA ARAKERE POST, KORATAGERE MAIN

	ROAD, TUMAKURU -572106 KARNATAKA
12.	KENDRIYA VIDYALAYA VIJAYAPURA AFZALPUR TAKKE, VIJAYAPURA (BIJAPUR) -586102 KARNATAKA
13.	KENDRIYA VIDYALAYA KARWAR NAVAL BASE, P O ARGA, KARWAR -581324 KARNATAKA
14.	KENDRIYA VIDYALAYA KODAGU, OPP. TO NEW COURT BUILDING, VIDYANAGAR MADIKERI -571201 KARNATAKA
15.	KENDRIYA VIDYALAYA BAGALKOT, NO. 63- A BRINDAVAN SECTOR NAVANAGAR, BAGALKOT -587103 KARNATAKA
16.	KENDRIYA VIDYALAYA CHENNAPATNA, C/O SERICULTURE TRG SCHOOL VANDARAGUPPE VILL., PO BENGALURU – MYSURU ROAD, CHENNAPATNA TALUK, RAMANAGRA DIST. - 562161 KARNATAKA
17.	KENDRIYA VIDYALAYA CHIKKAMAGALURU, DIET BUILDING CAMPUS RAMANAHALLI, CHIKKAMAGALURU – 577101
18.	KENDRIYA VIDYALAYA SHIVAMOGGA NEAR VADDINAKOPPA, SANTEKADURU N R PURA/ SHRINGERI HIGHWAY ROAD NIDIGE POST, SHIVAMOGGA KARNATAKA -577222
19.	KENDRIYA VIDYALAYA K R PURAM DIESEL LOCO SHED KRISHNARAJAPURAM BENGALURU – 560036 KARNATAKA
20.	KENDRIYA VIDYALAYA CHAMRAJNAGAR, MADAPUR POST, CHAMRAJNAGAR – 571313 KARNATAKA
21.	KENDRIYA VIDYALAYA MANDYA, B HOSURU COLONY KERAGODU HOBLI MANDYA TALUK/ DIST. - 571402 KARNATAKA
22.	KENDRIYA VIDYALAYA CHIKKODI, MLA GOVT. MODEL SCHOOL BUILDING, OPPOSITE PANCHAYAT TALUKA, NEAR MINI VIDHANA SOUDHA, CHIKODI, DISTRICT BELAGAVI - 591201 KARNATAKA
23.	KENDRIYA VIDYALAYA UDUPI, DIET CAMPUS, NEXT TO ITI COLLEGE PRAGATHI NAGAR, ALEVOOR MANIPAL POST UDUPI -576104 KARNATAKA
24.	KENDRIYA VIDYALAYA DAVANGERE AVARGOLLA, OPP KARUR CHIRANJEEVI AGRO FOOD, KONDAJJI ROAD DAVANGERE -577589 KARNATAKA
25.	KENDRIYA VIDYALAYA MEG & CENTRE, SAINT JOHNS CHURCH ROAD, BENGALURU - 560042 KARNATAKA
26.	KENDRIYA VIDYALAYA AFS, HAKIMPET, SECUNDERABAD- 500014 (TELANGANA)
27.	KENDRIYA VIDYALAYA, NTPC, RAMAGUNDAM, JYOTHI NAGAR- 505 215 (TELANGANA)
28.	KENDRIYA VIDYALAYA NO-2, VIJAYWADA WAGON WORKSHOP COLONY, GUNTUPALLI, VIJAYAWADA – 521241 (ANDHRA PRADESH)
29.	KENDRIYA VIDYALAYA, ONGC, BASE COMPLEX, LALACHERUVU, RAJAHMUNDRY – 533106 (ANDHRA PRADESH)
30.	KENDRIYA VIDYALAYA, MACHILLIPATNAM, BY PASS ROAD, GOPAL NAGAR, KRISHNA DISTRICT-521 001 (ANDHRA PRADESH)
31.	KENDRIYA VIDYALAYA, NFC NAGAR, GHATKESAR, MEDCHAL, MALAKAJAGIRI DISTRICT, SECUNDERABAD- 501 301 (TELANGANA)
32.	KENDRIYA VIDYALAYA, BOPPAPURAM ROAD, VENKATAGIRI, NELLORE DISTRICT – 524 404 (ANDHRA PRADESH)
33.	KENDRIYA VIDYALAYA, ELURU, GOPPANPALEM, DENDULUR MANDAL, WEST GODAWARI DIST- 534 450
34.	KENDRIYA VIDYALAYA, KADAPA, ADJACENT TO STM TOWNSHIP, NEAR NEW RIMS, KADAPA-516 001 (ANDHRA PRADESH)

35.	KENDRIYA VIDYALAYA, KARIMNAGAR, LMD ALUGUNOOR, KARIMNAGAR- 505 527 (TELANGANA)
36.	KENDRIYA VIDYALAYA, MIRYALAGUDA, NSP GROUNDS, DIST- NALGONDA- 508 207 (TELANGANA)
37.	KENDRIYA VIDYALAYA, MAHABUBABAD, SC GIRLS HOSTEL 'B' NANDAMURI NAGAR COLONY, MAHABUBABAD – 506 101 (TELANGANA)
38.	KENDRIYA VIDYALAYA, TENALI, KSM HIGH SCHOOL, CHENCHUPETA, TENALI, DIST. GUNTUR- 522 202 (ANDHRA PRADESH)
39.	KENDRIYA VIDYALAYA, SIRICILLA, C/O MPP SCHOOL, SUBHASH NAGAR, SIRICILLA- 505 301 (TELANGANA)
40.	KENDRIYA VIDYALAYA, BODHAN, C/O MADHU MALANCHA, JUNIOR COLLEGE, BELLA VILLAGE, SHAKKARNAGAR, POST – BODHAN - 503 180 (TELANGANA)
41.	KENDRIYA VIDYALAYA, JHARASANGAM (DIST) SANGAREDDY- 502 246 (ANDHRA PRADESH)
42.	KENDRIYA VIDYALAYA, RAJAMPET, GOVT JUNIOR COLLEGE CAMPUS BACK SIDE, SARASWATHIPURAM, RAJAMPET, KADAPA (DISTRICT) 516 115 (ANDHRA PRADESH)
43.	KENDRIYA VIDYALAYA, KAKINADA, VALASAPAKALA- 533 005 (ANDHRA PRADESH)
44.	KENDRIYA VIDYALAYA, MANCHERIAL DOOR NO 12-597/3 BELLAMPALLY CHAURASTA, MANCHERIAL- 504 208 (TELANGANA)
45.	KENDRIYA VIDYALAYA, SATTENAPALLI OPP. TO MRO OFFICE MAIN ROAD, GUNTUR , DIST- 522403 (ANDHRA PRADESH)
46.	KENDRIYA VIDYALAYA, MALKAPURAM, GANDHIGRAM POST, VISAKHAPATNAM- 530 005 (ANDHRA PRADESH)
47.	KENDRIYA VIDYALAYA NO-1, SRIVIJAYANAGAR, 104 AREA INDUSTRIAL ESTATE, VISAKHAPATNAM-530 007 (ANDHRA PRADESH)
48.	KENDRIYA VIDYALAYA NO-2, SRIVIJAYANAGAR, 104 AREA INDUSTRIAL ESTATE, VISAKHAPATNAM-530 007 (ANDHRA PRADESH)
49.	KENDRIYA VIDYALAYA NO-1, NAUSENABAGH, VISAKHAPATNAM-530 005 (ANDHRA PRADESH)
50.	KENDRIYA VIDYALAYA NO-2, NAUSENABAGH, VISAKHAPATNAM-530 005 (ANDHRA PRADESH)
51.	KENDRIYA VIDYALAYA, WALTAIR, BEHIND ANDHRA JYOTHI PRESS, THADICHETLAPALEM, VISAKHAPATNAM-530 016 (ANDHRA PRADESH)
52.	KENDRIYA VIDYALAYA, STEEL PLANT, VISAKHAPATNAM-530 032 (ANDHRA PRADESH)
53.	KENDRIYA VIDYALAYA, NAD VISAKHAPATNAM, NAD (PO) VISKHAPATNAM- 530 009 (ANDHRA PRADESH)
54.	KENDRIYA VIDYALAYA, INS KALINGA, BHEEMUNIPATNAM, VISKHAPATNAM – 531 163 (ANDHRA PRADESH)
55.	KENDRIYA VIDYALAYA, SRIKAKULAM, PEDDAPADU, NEAR EENADU OFFICE, NH-16, SRIKAKULAM- 532 401 (ANDHRA PRADESH)
56.	KENDRIYA VIDYALAYA, VIZIANAGARAM, NEAR SEVEN TEMPLES, BABAMETTA, VIZIANAGARAM-535 002 (ANDHRA PRADESH)
57.	KENDRIYA VIDYALAYA, RAJAMPALLY, GODRALIKONDA, TIRUMALANADHA SWAMI TEMPLE PREMISES, RAJAMPALLY VILLAGE, PEDDARAVEEDU MANDAL, MARKAPUR DIVISION, POST CHETLAMITLA, PRAKASHAM DIST- 523 320 (ANDHRA PRADESH)
58.	KENDRIYA VIDYALAYA, BHONGIRI, ALN, REDDY MEMORIAL GOVT GIRLS JUNIOR COLLEGE, BANJARA HILLS, YADADRI, BHUVANAGIRI DIST. BHONGIRI- 508 116 (TELANGANA)

59.	KENDRIYA VIDYALAYA, ADILABAD, NIRMITHI KENDRA, DASANAPUR, OLD DM HOUSE, ADILABAD- 504 001
60.	KENDRIYA VIDYALAYA, AURANGABAD, POST- JOGIA, DISTT – AURANGABAD- 824101
61.	KENDRIYA VIDYALAYA, RAIL WHEEL PLANT, BELA (SARAN), DISTT- SARAN (BIHAR)-841221
62.	KENDRIYA VIDYALAYA, HARNAUT CARRIAGE REPAIR WORKSHOP, HARNAUT-803110
63.	KENDRIYA VIDYALAYA, CRPF JHAPHAN, MUZAFFARPUR (BIHAR) - 842004
64.	KENDRIYA VIDYALAYA, SHANKARPURI, POST-TAKIA, SASARAM, DISTT- ROHTAS (BIHAR)-821113
65.	KENDRIYA VIDYALAYA, SHAHDARA, BLOCK-6, KHICHRIPUR, DELHI - 91

[F. No. 11011-2/2018-रा.भा.ए.]

SANJAY KUMAR SINHA, Jt. Secy.

नई दिल्ली, 27 नवम्बर, 2019

का.आ 2018.—सार्वजनिक स्थान (अनधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा 3 में प्रदत्त शक्तियों का प्रयोग करते हुए केंद्र सरकार एतदद्वारा श्री चंदर प्रताप राघवे, संयुक्त रजिस्ट्रार, संपदा अधिकारी, दिल्ली विश्वविद्यालय, केंद्र सरकार के राजपत्रित अधिकारी के रैंक के समकक्ष अधिकारी होने के नाते उक्त अधिनियम के उद्देश्यार्थ संपदा अधिकारी नियुक्त करती है, जो दिल्ली विश्वविद्यालय के प्रशासनिक नियंत्रण के अंतर्गत सार्वजनिक स्थान के संबंध में दिल्ली में उसके क्षेत्राधिकार की स्थानीय सीमाओं के अंतर्गत उक्त अधिनियम के अंतर्गत या इसके द्वारा संपदा अधिकारी को सौंपे गए दायित्वों का निर्वाह करेंगे और प्रदत्त शक्तियों का प्रयोग करेंगे।

[फा. सं. 4-15/2019-सीयू.II]

सुबोध कुमार घिल्डियाल, निदेशक

New Delhi, the 27th November, 2019

S.O. 2018.—In exercise of the power conferred by section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), the Central Government hereby appoints Shri Chander Pratap Raghave, Joint Registrar, Estates Officer, University of Delhi, being an officer equivalent to the rank of a gazetted officer of the Central Government, as Estate Officer for the purposes of the said Act, who shall exercise the powers conferred, and perform the duties imposed, on the Estate Officer by or under the said Act within the local limits of his jurisdiction in Delhi in respect of the public premises under the administrative control the University of Delhi.

[F. No. 4-15/2019-CU.II]

SUBODH KUMAR GHILDIYAL, Director

पैट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 20 नवम्बर, 2019

का. आ. 2019.—केन्द्रीय सरकार, पैट्रोलियम एवं खनिज पाईपलाइन की धारा 2 खंड (ए) के अनुसरण में (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50), उक्त अधिनियम के अधीन नुमालीगढ़ रिफाइनरी लिमिटेड की पारादीप उड़ीसा से लेकर नुमालीगढ़, असम तक समर्पित कच्चा तेल का पाइपलाइन, उड़ीसा राज्य के अंतर्गत (क्षेत्राधिकार का क्षेत्र: उड़ीसा राज्य की जिला जगतसिंगपुर, केंद्रपारा, भदरक और बालासोर(बिछाने के लिए नीचे दी गयी सारणी मे वर्णित प्राधिकारी के उक्त अधिनियम के अंतर्गत सक्षम प्राधिकारी के कार्यो का निर्वहन करने के लिए एतद्वारा प्राधिकृत करती है, अर्थात :

प्राधिकारी का पदनाम	अधिकार का क्षेत्र
अशोक कुमार बाग, ओएएस (एसएजी), सेवानिर्वित आरटीओ चौक, नजदीक रेडियो स्टेशन पीओ/पीएस: बालनगीर जिला बालनगीर-767001	ओडिशा राज्य के अंतर्गत

[फा. सं. आर-11025(14)/2/2019-ओआर-I/ई-32402]

पी. सोमा कुमार, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 20th November, 2019

S.O. 2019.—In pursuance of clause (a) of Section 2 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby authorizes the Authority mentioned in the table below to perform the functions of Competent Authority in the state of Odisha under the said Act for laying of dedicated Crude Oil Pipeline of Numaligarh Refinery Ltd from Paradip, Odisha to Numaligarh, Assam (Area of Jurisdiction: District of Jagatsinghpur, Kendrapara, Bhadrak and Balasore in Odisha), namely :

Designation of Authority	Area of Jurisdiction
Mr. Ashok Kumar Bag, OAS (SAG) Retd At RTO Chowk, Near Radio Station PO/PS: Balangir, Dist: Banalgir-767001	Within State of Odisha

[F. No. R-11025(14)/2/2019-OR-I/E-32402]

P. SOMA KUMAR, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 19 नवम्बर, 2019

का.आ. 2020.–औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनाइटेड बैंक आफ इंडिया के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकत्ता के पंचाट (संदर्भ सं. 103/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.11.2019 को प्राप्त हुआ था।

[सं. एल–12011/75/2015–आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 19th November, 2019

S.O. 2020.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 103/2015) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Kolkata as shown in the Annexure, in the industrial dispute between the management of United Bank of India, and their workmen, received by the Central Government on 19.11.2019.

[No. L-12011/75/2015-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 103 of 2015

Parties: Employers in relation to the management of United Bank of India

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : None

On behalf of the Workmen : None

State: West Bengal. Industry: Banking

Dated: 13th November , 2019

AWARD

By Order No.L-12011/75/2015-IR(B-II) dated 09.11.2015 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of United Bank of India, Kolkata (South) Regional Office in depriving the eligible employees of the Bank in violating the Bipartite settlement dated 2nd January, 1996 (copy enclosed) by not engaging the service as Special Assistant on temporary basis, where the post of special Assistant is lying vacant for a considerable period for the interest of the business of the Bank and its employees from their retiral benefits is legal or justified? If not, to what relief the concerned workmen are entitled to?"

2. When the case was listed last for hearing, none of the parties were present. It transpires from record that this reference is pending in this Tribunal since 26.11.2015 and the union entered appearance and filed its statement of claim, but the management never appeared inspite of all opportunities. The union, however, has not adduced any evidence in support of its claim as made in the statement of claim inspite of sufficient opportunities. Union is found absent since 20.05.2019, i.e., on two consecutive dates.

3. On consideration of the facts and circumstances of the case, it appears that the union has no grievance at present in respect of assignment of job of Special Assistant on temporary basis as mentioned in the order of reference. Therefore, there exists no dispute for adjudication.

4. Therefore, the reference is disposed of accordingly.

Justice RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,

The 13th November, 2019

नई दिल्ली, 19 नवम्बर, 2019

का.आ. 2021.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैन्ट्रल बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकत्ता के पंचाट (संदर्भ सं. 30/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.11.2019 को प्राप्त हुआ था।

[सं. एल–12012/38/2010–आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 19th November, 2019

S.O. 2021.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/2010) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Kolkata as shown in the Annexure, in the industrial dispute between the management of Central Bank of India, and their workmen, received by the Central Government on 19.11.2019.

[No. L-12012/38/2010-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 30 of 2010

Parties: Employers in relation to the management of Central Bank of India, Kolkata

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : None

On behalf of the Workmen : Mr. C.R. Kanjilal, Vice President of the union

State: West Bengal. Industry: Banking

Dated: 11th November, 2019

AWARD

By Order No.L-12012/38/2010-IR(B-II) dated 24.09.2010 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

> *"Whether employer-employee relationship existed between Shri Sanjay Sutradhar and the Central Bank of India in relation to Hill Cart Road Branch, Siliguri? If yes, whether the termination of Shri Sanjay Sutradhar from the service w.e.f. 31st December, 2007 is justified and legal? What relief the workman is entitled for?"*

2. Statement of claim has been filed on behalf of the workman, Shri Sanjay Sutradhar in which it has been pleaded that he was appointed in Service with effect from 01.01.1986 as a Sub Staff (Peon) at Siliguri Branch of the Central Bank of India. It is alleged that that he has served the bank for the last 22 years doing multifarious kinds of jobs, viz. telephone receiver cleaning, computer machine cleaning, water supply to bank staff, looking after scooters, cycles, four wheelers etc of bank staff. He was paid monthly wages ranging from Rs.800/= to Rs.3000/= per month since January, 1986 to December, 2007. Earlier wages were paid to him through vouchers and thereafter by debiting bank's account and crediting savings bank account of the workman concerned. It is further alleged that since January, 2008 he is jobless by verbal order of the Chief Manager. The local management of the bank, knowing fully well that the workmen worked in the capacity of sub-staff and there existed employer – employee relationship, fabricated the idea of outside agency. It is also alleged that the workman was paid Festival Advance, Puja Advance in the year 2003, 2004, 2005 and 2006. He was also sanctioned House Building Loan to the tune of Rs.65000/=. He has worked for more than 240 days within a block of 12 calendar months for several years since 1986 to December, 2007, but the management instead of making the workman permanent by extending the benefit of grade and scale to him, terminated his services on 31st December, 2007 without any show cause notice and without any chargesheet. Thus, provisions of Section 25F of the Industrial Disputes Act, 1947 have been violated.

3. In reply the management of the bank has pleaded that Shri Sutradhar was engaged for providing service as outside service provider and collecting money in lieu of his service provided to the customers and also paid nominal charges for cleaning computers and intercom of the branch. He was not appointed as a staff by following usual process of appointment of staff. He was never appointed or worked as casual worker. The bank has paid Rs.3000/= only at the time towards his service to the bank as a service provider which was subsequently credited monthly towards his service to the customers and nominal charges for cleaning computers and intercom and it was withdrawn/discontinued not at one go, but as per request of the workman concerned in installments of Rs.150/= per month since June, 2006.

4. The union has also filed its rejoinder reiterating its earlier stand taken in statement of claim.

5. The union has examined Shri Sanjay Sutradhar the workman concerned as a witness in which he has stated that earlier he was paid Rs.30/= per day for some months and then Rs.800/= per month with effect from April, 1986 and Rs.2000/= during the period of 2005 and as per Chief Manager's order dated 18.01.2006 the amount was increased from Rs.2000/= to Rs.2500/= from January, 2006. He has also stated that Festival Advance of Rs.1750/= during the period of 2004 and Rs.3000/= during 2005 have also been paid by the bank. He has further claimed that he was eligible to work as a permanent sub-staff in the bank, but his name was not sponsored by the bank. He has completed more than 240 days in several blocks of 12 calendar months during 1986 to January, 2007, but he was discontinued by the bank without any explanation. The bank cross-examined the witness, but it was not concluded. Thereafter no one appeared on behalf of the bank to cross-examine the witness. Hence his cross-examination was closed. Despite giving sufficient opportunity the management did not adduce any evidence in support of its pleading.

6. Thus it appears from the record that the claim of the union on behalf of the workman concerned is that he has worked for last 22 years as a casual Class-IV staff since 1986 to December, 2007 on monthly wages ranging from Rs.800/= to Rs.3000/= per month which was being credited to his Savings Bank Account. Thus he was in continuous service of the bank as he had worked for more than 240 days in 12 calendar months since 1986 till December, 2007. It is claimed that his non-engagement by the bank without following the provisions of Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred as the Act of 1947) is illegal. The bank in its written statement has pleaded that the workman concerned was engaged for providing service as an outside serviced provider and collecting money in lieu of his services provided to the customers and also paid nominal charges for cleaning computers and intercom of the bank. He was never appointed by following usual procedure for appointment. Thus, it is evident from the pleadings of the parties that there is no denial of period of work so done by the workman concerned by the management, except that the workman concerned was engaged as outside service provider.

7. Now, before coming to compliance of provisions of Section 25F of the Act of 1947, it would be proper to deal with status of the workman concerned. It is material to note that neither of the parties have filed any documentary evidence in this regard. The management has also not filed any document to show that the workman concerned was engaged as outside service provider and he was charging money or commission for the services rendered to the customers of the bank. Continuous service of the workman is proved by the letter issued by the Regional Manager, Central Bank of India to the Chief Manager, Siliguri Branch of the bank in which it had been asked from the Chief Manager of the branch as to why successive Branch Managers continued to engage Shri Sutradhar. This letter has been filed by the union as Ext. W-02. Where the engagement of the workman concerned by the bank has been admitted as above, burden lies on the management to show as to in what capacity he was engaged. In a letter sent by the Deputy General Manager of the bank to the Assistant Labour Commissioner (Central) – I, Kolkata, Ext. W-06 it is stated that his service was entirely on ad hoc basis. Where there is no documentary evidence directly to prove the status of engagement of the workman concerned, it is the preponderance of evidence which decides the issue. A letter addressed to the Chief Manager, Siliguri Branch, Ext. W-07 indicates that the workman concerned was engaged on monthly basis for upkeep of cycle stand. It is mentioned in the letter that the workman concerned had been receiving allowance of Rs.2000/= per month for the last 16 years. Therefore, a request had been made in this letter to enhance the allowance from Rs.2000/= to Rs.2500/=. The Chief Manager has passed his order on this application accepting the request of the workman concerned to increase the allowance from Rs.2000/= to Rs.2500/= with effect from January, 2006. On behalf of the workman concerned copy of Savings Bank Passbook has been filed as Ext. W-08 which shows that he had been receiving Rs.2500/= and also Rs.1000/= on monthly basis. Rs.1000/= had been drawn through seperate bill. No explanation has been given on record as to how the Chief Manager had increased the allowance from Rs.2000/= to Rs.2500/= and why he was being paid regularly on monthly basis, if he was not engaged by the bank or he was engaged as outside service provider for services to the customers.

8. In oral evidence the workman concerned has stated that he was engaged by the bank during the period 1986 to 2007 as casual sub-staff for which he was paid ranging from Rs.800/= per month to Rs.2000/= till 2005 and thereafter Rs.2500/= with effect from January, 2006. His duty was to upkeep the cycle, scooters etc. of the staff members and car of the Branch Manager in garage. The payments were made through credit vouchers to his Savings Bank Account No. 30637. No oral evidence has been given by the bank to controvert the statement of the workman concerned. Hence there is no reason to disbelieve the claim of the workman concerned that there existed relationship of employer and employee.

9. Where the engagement of the workman concerned by the bank is established, the question arises whether his service was discontinued following the provisions of Section 25F of the Act of 1947? Section 25F of the Act reads as follows:

*"**25F. Condition precedent to retrenchment of workmen** – No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until –*

(a) the workman has been given one month's notice in writing indicating the resons for retrenchjment and the period of notice expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

10. Thus where the workman has been in continuous service in not less than one year, the employer has to follow certain procedure as given in Section 25F before retrenching the workman. The words "continuous service" has been defined in Section 25B of the Act of 1947 according to which a workman is in continuous service for a period one year, if during a period of 12 calendar months preceding the date of reference he has actually worked for not less than 240 days. The case of the workman concerned is that he had worked for 240 days during the preceding 12 months, therefore, he cannot be denied the protection given under Section 25F of the Act of 1947. As it has been seen above, the claim of the workman concerned that he had worked from 1986 to 2007 continuously has not been denied by the bank, except saying that he had been engaged merely as an outside service provider for which no evidence is adduced by the bank. Therefore, in view of uncontroverted evidence of the workman concerned there is no reason to disbelieve that he had worked for more than 240 days during a period of 12 calendar months preceding the date of reference. The bank had also issued a circular dated 12th March, 1991 with regard to absorption of temporary employees who have put in 240 days of service. This circular is Ext. W-04 which is also filed by the management.

11. In view of above, it is sufficiently established that the services of the workman concerned were terminated by the bank without complying with the provisions of Section 25F of the Act of 1947. Therefore, the act of the management is illegal and the workman concerned shall be deemed to be in continuous service as before. Accordingly the workman concerned is entitled for reinstatement in service from the date of his termination. He is also entitled for 50% of back wages which may be found due to him.

Award is passed accordingly.

Justice RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,

The 11th November, 2019

नई दिल्ली, 19 नवम्बर, 2019

का.आ. 2022.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एण्ड सिंध बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, नई दिल्ली के पंचाट (संदर्भ सं. 11/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.11.2019 को प्राप्त हुआ था।

[सं. एल–12012/10/2008–आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 19th November, 2019

S.O. 2022.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2008) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court No 2,* New Delhi as shown in the Annexure, in the industrial dispute between the management of Punjab & Sind Bank, and their workmen, received by the Central Government on 19.11.2019.

[No. L-12012/10/2008-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 2: NEW DELHI

PRESENT : SMT. PRANITA MOHANTY, Presiding Officer, CGIT-cum-Labour Court-II, New Delhi

INDUSTRIAL DISPUTE CASE No. 11/2008

Date of Passing Award : 9th October, 2019

Between :-

Shri Paramjit Singh Nanda
R/o. BH-18, GF West Shalimar Bagh,
Delhi 110088. …Workman/Claimant

AND

The Chief Manager, Punjab and Sind Bank,
Zonal Office, Delhi –II, B-38 Indl Area,
Naraina, New Delhi 110028. …Management

Appearances :-

Shri Rajesh Kaushik, A/R For the Workman

Ms. Kittu Bajaj, A/R For the Management

AWARD

This award shall decide a reference which was made to this Tribunal by the appropriate Government vide letter No.L-12012/10/2008/IR(B-II) dated 31.03.2008 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:-

> 'Whether the action of the management of Punjab & Sind Bank, in compulsory retiring their workman Shri Paramjeet Singh Nanda we.f. 31.1.2007 is just, fair and legal ? If not, to what relief the workman is entitled?'

2. Both parties were put to notice and the claimant Paramjit Singh filed his statement of claim, contending that he was working as clerk cum cashier at Gurgaon Branch of the Management. He used to discharge his duties with utmost devotion, honesty and sincerity but inspite of that, a false and frivolous charge sheet dated 4/1/2005 was issued to him, with the allegations that the workman tried to avail a Housing Loan of Rs.15 lacs from IDBI, New Delhi without any permission from the Competent Authority and had submitted a fabricated statement of his SB A/c No.9337 to the IDBI, incorporating wrong credit entries to show inflated salary and balance therein besides recasting Form-16 wherein he wrongfully incorporated his designation as CCC Manager Computer & also forged the signatures of Shri V.K Gupta, previous Branch Manager on Form No.16 falsely showing his annual income as Rs.2,99,688/- as against his actual income of Rs.1,94,300/-. It is alleged that the findings of the Enquiry Officer are perverse & erroneous as no proper opportunity of being heard was afforded to the workman and orders passed pursuant to the same are in violation of the Principle of Natural Justice. The Disciplinary Authority did not consider workman's blotless service career for a period of 27 years and passed order dated 31/1/2007 whereby extreme punishment of compulsorily retirement has been awarded which is highly disproportionate and harsh. Appeal preferred by the workman was also dismissed by the Appellate Authority without considering that the workman has already filed a criminal complaint against the overzealous agent Shri Sachin Kumar for having committed offence of cheating and forgery which is pending before the court of concerned Metropolitan Magistrate, Rohini Courts, Delhi. Prayer has been made for declaring the action of the Management to be unjust and illegal and for reinstatement of the workman into service with full back wages and other consequential benefits.

3. Management resisted the claim of the Workman by filing written statement wherein preliminary objections have been taken inter-alia that the punishment awarded to the workman is just, legal and proportionate to the misconduct as enunciated in the charge sheet dated 4/1/2005 which was duly served and proved in a departmental enquiry held in consonance with the principle of natural justice.. To avail a loan of Rs.15 lacs from IDBI, the workman had fabricated statement of his SB Account No.9337, recasted from No.16 and fabricated salary certificate incorporating fictitious and incorrect entries relating to his salary, annual income and designation etc and thereby he projected wrong facts to the IDBI. The workman wrongfully incorporated his designation as CCC, Manager Computer in Form 16 and forged the signatures of previous Branch Manager Shri V.K. Gupta . Against his actual basic salary of Rs.9740/-, he showed his basic salary at Rs.14120/- in the salary statement. Being a banker, the workman was having implicit knowledge that within his source of income, loan to the tune of Rs.15 lacs was not permissible but still he applied for a loan without

permission from the employer. The plea of the agent doing fraud with the bank to pass undue benefit to the customers to the detriment of their principal is not correct. From the issuance of cheque of processing amount, the workman had the intent of availing a housing loan from IDBI by concealing facts from his employer. The findings of the Inquiry Officer as well as Disciplinary authority are independent, cogent and based on the record. Prayer has been made for dismissal of the claim petition.

4- Rejoinder was filed on behalf of the workman wherein he reiterated the averments made in the claim petition and denied the allegations as made in reply/written statement of the Management.

5- On the pleadings of the parties, following issues were framed on 12/3/2009:-

i) Whether the departmental enquiry conducted in this case was legal, just and fair and was not in violation of the principle of natural justice ? If not what directions are called for in this case?

ii) As per terms of the reference ?

iii) Relief.

6. In support of his case, the workman examined himself as WW1 who tendered his evidence by way of affidavit and relied on the documents detailed therein. On the other hand, the Management examined three witnesses namely Shri Ashok Sachdeva, Chief Manager, Punjab & Sind Bank as MW1; Shri Satyavrat Arya, Senior Manager as MW2 and Shri Vinod Kumar Gupta as MW2 (sic.MW3).

7- I have gone through the records carefully. My findings on issue No.2 and 3 are as follows, as issue No.1 being preliminary issue stands already decided vide order dated 19/9/2016.

Issue No.2 and 3 :-

8- At the outset I may mention that vide detailed order dated 19/9/2016 my learned Predecessor **decided 1ssue No.1** against the Management observing that MW1 was neither the Enquiry Officer, nor Presenting Officer nor he remained present during enquiry and even original record of enquiry was not filed before the Tribunal. Since the Management in its written statement had reserved its right to adduce evidence in case the departmental enquiry is set aside, the matter was posted for evidence of the Management to prove misconduct on the part of the workman. In this respect, the Management examined two witnesses namely Shri Satyavrat Arya and Shri Vinod Kumar Gupta. As such, now I proceed to decide as to whether the Management has been able to prove misconduct on the part of the workman/claimant.

9- Perusal of the record shows that the workman/claimant was issued a charge sheet, copy of which is Ex.M-1, alleging that he had applied for a Housing Loan of Rs.15 lacs from IDBI, New Delhi **without any permission from the Competent Authority** and had submitted a **fabricated statement of his SB A/c** No.9337 to the IDBI, incorporating wrong credit entries to show inflated salary and balance therein besides **recasting Form-16 wherein he wrongfully incorporated his designation as CCC Manager Computer & also forged the signatures of Shri V.K Gupta,** previous Branch Manager on Form No.16 falsely showing his annual income as Rs.2,99,688/- as against his actual income of Rs.1,94,300/-.

10- The testimony of the claimant/workman is in line with the averments made in the claim petition. He placed reliance on the final report under Section 173 Cr.PC in the case FIR No.299 of 2008 of PS Prashant Vihar as well report of CSL as Ex.WW1/1 and WW1/2. The workman was cross examined at length on the point of availing housing loan by him jointly with his wife from IDBI Bank and on domestic enquiry conducted against him but nothing material came out on record to shake his testimony. From the testimony of the claimant/workman as well as documents filed on record, it is evident that the workman/claimant has got registered a case under Section 406/420/463/467/468/471 IPC against one Sachin Kumar, DSA (Direct Selling Agent) of IDBI Bank.

11- Testimony of MW2 Satyvrat Arya is not of much help to the case of the Management inasmuch as he deposed in his cross examination that he canld not name the persons who informed about the wrong documents submitted by the workman. He claimed that he (the informer) was from IDBI but admitted that no individual/official from IDBI was examined during the departmental enquiry. He showed his ignorance if the original of the alleged forged documents were produced before the Inquiry Officer at the time of departmental inquiry proceedings. This witness also could not say if Shri V.K. Gupta, previous Manager of the Bank whose signatures were allegedly forged was examined as a witness in the departmental enquiry. He deposed that he had not come across any guidelines, restricting a bank employee from taking loans from any other bank than his employer bank. He could not say if the workman had availed loan from any other bank.

12- Although testimony of MW3 Vinod Kumar Gupta whose signatures were allegedly forged and fabricated in recasted Form-16 by the workman/claimant for availing loan from IDBI, is in line with the averments made in the written statement as well as charges framed in the charge-sheet Ex.M-1, however, **same can not take the place of**

proof, inasmuch the Management has neither examined any official from IDBI nor produced original documents to show that the workman had actually recasted and submitted forged & fabricated documents Form-16 & salary certificate to the IDBI. He explained in his cross examination that he had correctly stated in his affidavit about Rs.16 lakhs (housing loan) applied by the workman, whereas as per record the workman had applied for Rs.15 lakhs towards Housing Loan to IDBI. He also admitted that during the course of departmental enquiry, he had not testified as a witness. **In case the signatures of this witness being a Senior Officer of the Management Bank were forged by the claimant, then as to why he did not appear as a witness before the Enquiry Officer in the domestic enquiry. No explanation for the same has come forward from the side of the Management.** The claimant has filed on record a copy of the criminal complaint lodged against the agent Sachin Kumar for having committed offence of cheating and forgery as Ex.WW1/6 and copy of the order dated 16/4/2008 (Ex.WW1/7) passed by the Court of Shri Amit Bansal, Metropolitan Magistrate, Delhi whereby police was directed to register an FIR. His version that the police has already registered an FIR at PS Prashant Vihar has gone unchallenged. In cross examination, he explained and filed on record copy of Final report under Section 173 of Cr.PC in case FIR No.299 of 2008 of PS Prashant Vihar as Ex.E-1/1 and CFSL report as Ex.E-1/2. CFSL report Ex.E-1/2 prima facie shows that standard signatures marked S-1 to S-2 and A-1 to A-3 of Shri Paramjit Singh Nanda were not matching with the signatures Q-1 to Q-5 appearing on Home Loan Application Form, statement of account, salary certificate and form-16 purported to be of Shri Paramjit Singh Nanda.

13- In the light of aforesaid, this Tribunal is of considered view that the Management has not led any cogent evidence to substantiate its stand that the workman had submitted forged & fabricated documents like SB account statement, salary certificate, form-16 etc. to the IDBI Bank for securing housing loan of Rs.15 lakhs. As such, the Management has failed to prove that the workman misconducted himself by forging and fabricating documents. However, it is not in dispute that the claimant/workman had applied for a housing loan but no permission of the Management Bank was sought by him. This fact is so evident from para 12 of his own affidavit Ex.WW1/A which is in consonance with para 10 of the statement of claim wherein he has stated as under :-

> " The workman had applied for a housing loan in a situation when real estate market is highly inflationary, prices of real estate during last one year having risen at a rate more than 100 per cent in last one year alone. I further say that the past experience shows that who invested in real estate had received such dividend that repayment was not at all difficult. I further say that the repayment was intended to be done from the rental income to be received and partly from my and my wife's combined savings which would not have posed any difficulty in repayment…. ……."

It was incumbent upon the workman/claimant who was already in service for the last over 25 years to seek necessary permission/approval of the Competent Authority for availing loan of building home. The workman/claimant has neither pleaded nor proved that he had sought permission/approval of the Management Bank for seeking housing loan from IDBI. As such, **it can be concluded that there was misconduct on the part of the workman/claimant, in not seeking permission of the Management Bank while applying for a housing loan**. But the said misconduct of the workman was/is not too grave to impose major punishment like compulsorily retiring him from service, rather same warrants a minor penalty. There would be unnecessary delay if the matter is remanded back to the Management for imposing penalty upon the workman/claimant keeping in view the aforesaid act of misconduct proved against the workman. Needless to mention here that Section 11-A of the Act empowers this Tribunal not only to interfere with the quantum of punishment in appropriate cases & to direct reinstatement of the workman on such terms & conditions if any, as it thinks fit in lieu of discharge or dismissal, **but also to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct.** Reference in this regard may be made to the decisions of Hon'ble Apex Court in the case of **Pepsu Road Transport Corporation Versus Rawel Singh, 2008 AIR (SCW) 2099; B.C. Chaturvedi Versus Union of India and others, 1996(1) SCT 617 ;** of Punjab & Hayana High Court in the case/s of **Punjab National Bank Vs. The Presiding Officer, CGIT & another 2012 (2) SLR 631; Harnek Singh Versus State of Haryana & others 2010(3) SLR 276 and Joginder Lal Versus The Presiding Officer, Labour Court, Ambala & another 1996() SCT 436).** As such, the impugned order dated 31/1/2007 passed by the Management on the basis of report of the Enquiry Officer, can not be legally sustained. Resultantly, the action of the Management in compulsorily retiring the workman/claimant w.e.f. 31/1/2017 is held to be quite harsh and disproportionate to the act of his proved misconduct.

14- Now the residual question is whether the claimant/workman is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full or partial back wages, keeping in mind the misconduct on the part of the workman/claimant as discussed hereinabove. It is not in dispute that claimant was a regular employee, working as clerk -cum -cashier in the employment of the Management. Moreover, the job of the workman was/is of perennial and regular nature and he had already rendered service of 27 years' when he was compulsorily retired from service w.e.f. 31/1/2007 vide impugned order. During the course of arguments, this Tribunal was informed that **the workman having born on 1st October, 1957 has already crossed the age of his superannuation.** Had he been in service, he would have superannuated from service on 30/9/2017. As such, the relief of reinstatement of the workman into service has become infructuous.

15- The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti ,Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under :

"The propositions which can be culled out from the aforementioned judgments are :

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

16- A Bench of three Judges of the Hon'ble Supreme Court in the case of Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80 held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen alongwith payment of back wages.

17. In the case of **Bholanath Lal and others Vs. Shree Om Enterprises (P) Ltd., Manu/DE/1922/2018** (decided on 10/5/2018), Hon'ble High Court of Delhi while considering the question of illegal termination and reinstatement held as under :-

"The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same The courts must always keep in view that that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee./workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/ workman his dues in the form of full back wages."

18- Having regard to the overall facts and circumstances of the case, this Tribunal considers it expedient in the interest of justice to award partial back wages instead of full back wages. The workman/clamant is held entitled to get 80% (eighty per cent) back wages, from the date of his termination till he attained the age of superannuation. These issues are accordingly answered in favour of the workman.

ORDER

The reference is answered on the contest in favour of the workman. The order passed by the Management regarding compulsorily retiring the workman/claimant from service on 31/1/2007 is held to be unjustified and unwarranted. It is ordered that the workman shall be deemed to be in service w.e.f. 1/2/2007 till 30/9/2017. It is also ordered that the claimant shall be entitled to 80 per cent back wages for the period from 1/2/2007 till 30/9/2017, however, subject to adjustment of amount of pension if any paid to the workman for the aforesaid period. Arrears shall be calculated and be paid by the Management to the claimant within four months from the date of publication of the Award, failing which the claimant/workman will be entitled to recover the same alongwith interest @ 6% from the date of publication of the Award till realization. Award is passed accordingly. Let copy of this Award be sent for publication as required under Section 17 of the Act.

The reference is accordingly answered.

Dictated & corrected by me.

PRANITA MOHANTY, Presiding Officer

9th October, 2019

नई दिल्ली, 19 नवम्बर, 2019

का.आ. 2023.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स बाल्को लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 40/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.11.2019 को प्राप्त हुआ था।

[सं. एल-43012/3/2011-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 19th November, 2019

S.O. 2023.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 40/2012) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BALCO Limited and their workman, which was received by the Central Government on 19.11.2019.

[No. L-43012/3/2011-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/40-2012

Shri Abhay Singh
Near Pradip Atta Chakki, Pratappur Raod
Kedarpur, Ambikapur (CG) …Workman/Union

Versus

1. The Chief Executive Officer,
   BALCO Ltd.,
   Balco Plant,
   District Korba(CG) …Management

AWARD

(Passed on this 18th day of October, 2019)

1. As per letter No dated 22/2/2012 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-43012/3/2011-IR(M): The dispute under reference relates to:

> 2. **"Whether the action of the management of BALCO Limited in terminating the services of Shri Abhay Singh S/o Shri Tulsi Singh, Ex-Supply Labour w.e.f. March,2009 without giving any notice/reasonable opportunity of retrenchment benefits is legal and justified ? What relief the workman is entitled to and from what date.?"**

3. After registering the case on the basis of reference, notices were sent to the parties.

4. The case of the Workman is that he was first appointed as unskilled worked in Ambikapur office of the management company by appointment letter issued vide AG M(Mines) on 1-1-1998 and has been in continuous service of the company till 9-1-2009. He was dismissed from service without any charge and without any notice or compensation which is against law and is liable to be set aside. The workman has prayed for the relief of his re-instatement treating him as regular employee with benefits.

5. The case of management is that workman was never appointed as an employee of AGM (Mines) and has not power to appoint any person in the company hence any such letter is without any authority. In fact the workman was employee of the contractor engaged by the company. There was no relation of employer and employee between the workman and the management at any point of time accordingly it has been prayed that the reference be answered against the workman.

6. At the stage of evidence**,** no evidence was adduced by workman hence closing his evidence management was directed to file their evidence. The workman absented himself during the proceedings. Management filed affidavit of its witnesses as examination-in-chief and proved documents exhibit M-1 to M-5, to be referred to as and when required. At the stage of argument also the workman absented himself hence argument of learned counsel for Management Shri A. K. Shashi was heard. I have gone through the record as well.

7. The reference is the fact in issue in the case in hand.

8. Certain provisions of law which is required to be mentioned here are being mentioned as follows:-

Section 2(oo) of Industrial Disputes Act:

2[(oo) "retrenchment" means the termination by the employer of the service of a workman for any any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;

2 [25N. Conditions precedent to retrenchment of workmen.—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,— (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf. (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner. (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen. (4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days. (5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order. 1. Sub-section (6) re-numbered as sub-section (10) by Act 49 of 1984, s. 4 (w.e.f. 18-8-1984). 2. Subs. by s. 5, ibid., for section 25N (w.e.f. 18-8-1984). 33 (6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference. (7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him. (8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct, that the provisions of sub- section (1) shall not apply in relation to such establishment for such period as may be specified in the order. (9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.]

9. The settled proposition of law is that the burden to prove the fact that he was in the continuous service of management for a period of 240 days or more on the date preceding the date of his termination there is no evidence on record to this effect, hence the claim of the workman that he was in continuous service of Management for a period of more than 240 days in the year preceding his termination is held not proved. Accordingly, the disengagement of workman is held justified in law and the workman is held entitled to no relief.

Accordingly the award is passed as follows:-

A. The action of Management in disengaging the workman due to the fact that he was not in continuous service for a period of more than 240 days in the year preceding his termination is held justified in law.

B. The Workman is held entitled to no relief.

10. Let the copies of the award be sent to the Government of India,Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 19 नवम्बर, 2019

का.आ. 2024.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैंगनीज ओर इंडिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 95/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.11.2019 को प्राप्त हुआ था।

[सं. एल-27012/2/2007-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 19th November, 2019

S.O. 2024.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 95/2007) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Manganese Ore (I) Limited and their workman, which was received by the Central Government on 19.11.2019.

[No. L-27012/2/2007-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/95-2007

MOI Kamgaar Sangathan
The General Secretary,
Katol Road,Chhaaoni,
Behind Durga Mandir,
Moil Staff Colony
Nagpur-13 …Workman/Union

Versus

1. The General Manager(P)
Manganese Ore(I)Ltd.,
3 Mount Extension,
Sadar, P.O.Box No.34
Nagpur-440001 …Management

AWARD

(Passed on this day 22nd October, 2019)

1. As per letter No dated 11/09/2007 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-27012/2/2007- IR(M). The dispute under reference relates to:

2. **"Whether the action of the Management for not considering the compassionate appointment of the dependants of the workman Sh. Jeevanlal Ramtake on being declared dead is just and legal as per the Department's Rules and Regulations? If not, to what relief the dependent is entitled?"**

3. After registering the case on the basis of reference, notices were sent to the parties.

4. Jevevanlal Ramteka was working as an employee of the employer company as holage operator in Ukawa Mines. He was suffering from medical illness. He left his place of residence on or about February-1998 with or without knowledge of his family members . He became untraceable. A complaint was filed with the police station on 3.9.98 and the information to this effect was given to the Management. Despite of this, the Management issued dismissal order against Jevanlal on 16-2-2000 on the basis of an ex-parte inquiry against him on the basis of his absenteeism which is against the law .Since the workman is not traceable, he is presumed to be dead, and on this basis his dependent son Krishna made an application on compassionate ground for appointment which was not considered. A dispute was raised after failure of conciliation, a report was sent by Labour commissioner to government who made the present reference to the award. Accordingly the workman union has prayed that dependent son of the workman be given appointment on compassionate ground.

5. The case of Management is that worker Jeeveanlal absented himself, hence a charge- sheet was issued against him on 31-5-1998. He did not submit any reply. A departmental inquiry was ordered to be conducted vide order dated December-1998 and H.N.Chaourasia Manager was appointed as inquiry officer. The inquiry officer sent notices to the workman on his address. Notices were got published in daily newspaper. Even then the workman did not appear. It came out that the workman was reported sick in the dispensary on 31.1.98 but he failed to report for duty or at dispensary thereafter, hence the inquiry was proceeded ex-parte against the workman. The Inquiry Officer submitted the inquiry report holding the charge of absenteeism from 1-2-98 to 31-5-98. The workman was again issued show cause notice on the basis of the inquiry. He did not respond hence he was terminated from service vide order dated 16-2-2000. It has further been pleaded that there is no provision for giving compassionate appointment to dependent of workman who has been terminated from service. Accordingly it has been prayed that the reference be answered against the workman.

6. At the stage of evidence the applicant union absented itself . The Union filed photocopy of identity card of workman, photocopy of letter dated 13.9.2005 and its reply as well copy of charge sheet which are admitted by Management hence marked as exhibit W-1 to W-4. No oral evidence was adduced by workman.

7. Management filed affidavit of its witness as his examination-in-chief who proved the inquiry papers exhibit M-1 to M-20. None was present from the side of the workman to cross-examine, inspite of the fact that fresh speed post notices were sent to them were served.

8. Closing opportunity of cross-examination of Management witness, arguments of learned counsel for Management were heard and records have been perused by me.

9. The reference is the fact in issue in the case In hand.

10. From the evidence of Management it is proved that workman Jeevanlal was dismissed from service for the charge of unjustified absenteeism . No rule or any provision has been cited from the side of the workman to show that compassionate appointment is to be given even to the dependent of a dismissed employee. As regards to the presumed civil death of a workman Jeevanlal, there is no evidence on record in this respect.

11. Hence in the light of above discussion, the action of management in not considering the compassionate appointment of dependent son of workman Jeevanlal Ramtake on being declared dead is held just and legal and the applicant side is held entitled to no relief.

Accordingly the award is passed as follows:-

A. The action of management in not considering the compassionate appointment of dependent son of workman Jeevanlal Ramtake on being declared dead is held just and legal .

B. The applicant side is held entitled to no relief.

12. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

Date:-22-10-2019

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 19 नवम्बर, 2019

का.आ. 2025.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स हिन्दुस्तान कॉपर लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 27/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.11.2019 को प्राप्त हुआ था।

[सं. एल-43012/10/2009-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 19th November, 2019

S.O. 2025.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 27/2009) of the Central Government Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Hindustan Copper Limited and their workman, which was received by the Central Government on 19.11.2019.

[No. L-43012/10/2009-IR(M)]

D. K. HIMANSHU, Under Secy.

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर सी.जी.आई.टी. प्रकरण सं. 27 / 2009

पीठासीन अधिकारी : राधामोहन चतुर्वेदी

रेफरेन्स नं. -L-43012/10/2009–IR(M) दिनांक 31/08/2009

हरिप्रसाद मिश्रा पुत्र श्री गणपत राम,
मार्फत सांवर मल शास्त्री,
संस्कृत पाठशाला खेतड़ी, जिला–झुन्झुनू, भूतपूर्व हेल्पर खेतड़ी कॉपर कॉम्पलेक्स, खेतड़ी,
जिला–झुन्झुनू, (राजस्थान)

v/s

1. जनरल मैनेजर,
हिन्दुस्तान कॉपर लिमिटेड़,
के.सी.सी. खेतड़ी नगर, जिला–झुन्झुनू राज.

2. कार्मिक अधिकारी,
खेतड़ी कॉपर कॉम्पलेक्स, खेतड़ी,
जिला–झुन्झुनू, (राजस्थान)

3. कार्यकारी मुख्य प्रबन्ध (यांत्रिक)
अनुशासनिक अधिकारी (प्राधिकारी),
खेतड़ी कॉपर कॉम्पलेक्स, खेतड़ी,
जिला–झुन्झुनू, (राजस्थान)

4. उप–महाप्रबन्धक (खदान)
के.सी.एम. अनुशासनिक अधिकारी,
खेतड़ी कॉपर कॉम्पलेक्स,
खेतड़ी, जिला–झुन्झुनू, (राजस्थान)

5. मुख्य प्रबन्धक (कार्मिक),
खेतड़ी कॉपर कॉम्पलेक्स,
खेतड़ी, जिला–झुन्झुनू, (राजस्थान)

प्रार्थी की तरफ से : श्री आर.सी. जैन – प्रतिनिधि
विपक्षीगण की तरफ से : श्री अशोक वर्मा – अभिभाषक

: अधिनिर्णय :

दिनांक : 25.10.2019

1. श्रम मंत्रालय भारत सरकार, नई दिल्ली द्वारा दिनांक 31.08.2009 को औद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम कहा जावेगा) की धारा 10 उपधारा (1) (घ) एवं 2 (ए) के प्रावधानों के अन्तर्गत प्रदत्त शक्तियों के प्रयोग में निम्नांकित विवाद इस अधिकरण को संदर्भित किया गया।

> "Whether the action of the management of KCC in dismissing the services of Shri Hari Prasad, Miner vide order dated 11/12/2000 on the basis of ex-parte proceedings on the charge of absenteeism while has was in Jail/custody for involving in a criminal offence is just and fair? What relief the workman is entitled to and from which date?"

2. उक्त विवाद प्राप्त होने पर अधिकरण द्वारा उभयपक्ष को सूचना पत्र जारी कर आहूत किया गया तथा प्रार्थी को निर्देश दिये गये कि वह अपने दावे का अभिकथन प्रस्तुत करें।

3. प्रार्थी ने दिनांक 21.12.2009 को अपने दावे का अभिकथन प्रस्तुत किया। दावे के संक्षिप्त तथ्य इस प्रकार वर्णित हैं।

4. प्रार्थी की नियुक्ति अप्रार्थी संस्थान में सेवा शर्तों के सम्बन्ध में निर्मित स्थायी आदेशों के अनुरूप साक्षात्कार में चयन किये जाने के बाद हेल्पर के पद पर छः माह की परिवीक्षा पर की गई। प्रार्थी ने दिनांक 23.7.76 को उक्त पद पर कार्यभार संभाला। लगभग 23 वर्ष सेवा करने के उपरान्त दिनांक 13.11.99 को प्रार्थी अपने पारिवारिक कार्य करने के लिये अवकाश प्रार्थना पत्र प्रस्तुत कर अपने स्थायी निवास पर गया। विषम परिस्थितियों के कारण प्रार्थी ने दिनांक 15.11.99 से अवकाश बढ़ाने हेतु प्रार्थना पत्र समय–समय पर अप्रार्थी संख्या 3 को प्रेषित कियें। इन प्रार्थना पत्रों पर अप्रार्थी ने अवकाश स्वीकृत अथवा अस्वीकृत करने की सूचना नहीं दी। अप्रार्थी संख्या 3 ने दिनांक 21.7.2000 को प्रार्थी को आरोप पत्र जारी किया, जो उसे नहीं मिला। अप्रार्थी ने स्थायी आदेशों के प्रावधानों की अवहेलना करते हुए एवं प्रार्थी को कोई अवसर न देते हुए जॉच अधिकारी नियुक्त किया। यह आरोप पत्र विधि विरूद्ध है। प्रार्थी को जांच की तिथि से सूचित नहीं किया गया और न हीं बचाव का अवसर दिया गया। आरोप पत्र सक्षम अधिकारी द्वारा नहीं दिया गया। प्रार्थी न्यायिक अभिरक्षा में होने से उपस्थित नहीं हो सका। इस तथ्य की सूचना जिला कारागार के माध्यम से अप्रार्थीगण को भेजी गयी। प्रार्थी के विरूद्ध जांच कार्यवाही उसके न्यायिक अभिरक्षा से मुक्त होने तक स्थगित रखनी चाहिये थी। किन्तु प्रार्थी को किसी प्रकार का कोई अवसर न देते हुए दिनांक 11.12.2000 को सेवा से बर्खास्त कर दिया गया। प्रार्थी ने इस आदेश से व्यथित होकर अपील प्रस्तुत की किन्तु उस पर कोई निर्णय की सूचना प्रार्थी को नहीं दी गई। समझौता अधिकारी के समक्ष भी समझौता सम्भव नहीं हुआ। दिनांक 11.12.2000 को प्रार्थी का सेवा से पृथक किया जाना विधि

विरूद्ध है। अतः आदेश को शून्य घोषित कर प्रार्थी को समस्त वेतन भत्तों सहित पदस्थापित किया जाने का अवार्ड पारित किया जावे।

5. दिनांक 15.4.2010 को अप्रार्थी / विपक्षीगण ने प्रतिउत्तर प्रस्तुत कर दावे के तथ्यों को अस्वीकार किया। उनका कथन है कि प्रार्थी को दिनांक 21.7.2000 के पूर्व भी अनुशासनहीनता के लिये आरोप पत्र दिये गये थे। प्रार्थी ने अवकाश प्रार्थना पत्र प्रस्तुत नहीं किये और पिछली तिथि अंकित कर फर्जी तैयार कियें। प्रार्थी ने उसके पुलिस या न्यायिक अभिरक्षा में रहने का तथ्य जानबूझकर छिपाया। इन प्रार्थना पत्रों पर उसके हस्ताक्षर भी कूटरचित हैं। प्रार्थी का कोई अवकाश स्वीकार नहीं हुआ। प्रार्थी द्वारा दिये गये अन्तिम पते पर उसे उपस्थित होने के लिये पत्र एवं तार प्रेषित किये गये जो उसे प्राप्त भी हुए। न्यायालय द्वारा दोष–सिद्धि के उपरान्त प्रार्थी की सेवामुक्ति का कारण भी विद्यमान था। प्रार्थी के विरूद्ध स्थायी आदेशों के अनुसार जांच अधिकारी की नियुक्ति कर जांच कार्यवाही की गई। दिनांक 11.12.2000 को सक्षम अधिकारी द्वारा दण्डादेश भी दिया गया। प्रार्थी सूचना होने पर भी जांच कार्यवाही में उपस्थित नहीं हुआ। प्रार्थी द्वारा प्रस्तुत अपील को अस्वीकार कर उसे सूचित कर दिया गया था। प्रार्थी को न्यायालय ने छः वर्ष से अधिक अवधि के कारावास के दण्ड से दण्डित किया। इन परिस्थितियों में एक दोष–सिद्ध व्यक्ति को सेवा में लेना और सेवा की निरन्तरता रखना विधिवत नहीं है। यदि प्रार्थी के विरूद्ध की गई जांच अनुचित एवं नियम विरूद्ध पाई जावें तो विपक्षीगण को साक्ष्य प्रस्तुत करने का अवसर दिया जावें। अतः वाद अस्वीकार किया जावें।

6. चूंकि यह प्रकरण प्रार्थी के विरूद्ध की गई जांच कार्यवाही से सम्बन्धित है इसलिये इस अधिकरण द्वारा घरेलू जांच की शुद्धता का परीक्षण अधिनिर्णय के पूर्व किया गया। दिनांक 9.5.2011 को पृथक से आदेश पारित करते हुए मेरे पूर्वाधिकारी द्वारा विपक्षीगण द्वारा की गई घरेलू जांच की शुद्धता को उचित एवं वैध नहीं पाया गया।

7. तत्पश्चात विपक्षीगण को प्रार्थी के विरूद्ध आरोप को प्रमाणित करने हेतु साक्ष्य का अवसर दिया गया। विपक्षीगण ने साक्ष्य में श्री पी.पी.एन. शर्मा असिस्टेन्ट मैनेजर (एच.आर.) को परीक्षित किया। प्रलेखीय साक्ष्य में प्रदर्श– एम 1 से एम 11 तक प्रलेख प्रदर्शित कियें गये। तत्पश्चात प्रार्थी ने अपनी साक्ष्य में स्वंय प्रार्थी हरीप्रसाद मिश्रा को परीक्षित किया। प्रार्थी से की गई प्रतिपरीक्षा में प्रदर्श– डब्ल्यू 1 से डब्ल्यू 9 तक प्रलेखों को प्रदर्शित किया गया।

8. दिनांक 26.9.2019 को मैनें उभयपक्ष के परस्पर विरोधी तर्कों को साक्ष्य के संदर्भ में सुना व ध्यानपूर्वक विचार किया।

9. अभिभाषक विपक्षीगण का यह तर्क है कि प्रार्थी ने अपने दावे में पारिवारिक कार्य के लिये अवकाश प्रार्थना पत्र प्रस्तुत करना कहा है जबकि उसे पुलिस द्वारा गिरफ्तार कर न्यायिक अभिरक्षा में भिजवाया गया था। प्रार्थी ने अपने जेल में होने की कोई सूचना विपक्षीगण को नही दी। प्रार्थी को उसके दिये गये अन्तिम पते पर पत्र व्यवहार किया गया। प्रार्थी के सभी अवकाश प्रार्थना पत्रों को अस्वीकार कर दिया गया था और उसे उपस्थित होने का निर्देश दिया गया था। प्रार्थी विपक्षीगण के कारण या उनके षडयन्त्र से कारागार में नहीं गया वरन अपने अपराध के कारण रहा। वह छः वर्ष से अधिक अवधि तक जेल में रहा और उसकी यह अनुपस्थिति प्रार्थी ने भी स्वीकार की है। विपक्षीगण द्वारा स्थायी आदेशों के अनुरूप सक्षम प्राधिकारी द्वारा आरोप पत्र जारी कर जांच कार्यवाही सम्पन्न की गई। प्रार्थी का जो पता विपक्षीगण को दे रखा था उसी पर समस्त पत्र व्यवहार किया गया। लेकिन प्रार्थी उपस्थिति नहीं हुआ। इसलिये विवश होकर सक्षम प्राधिकारी द्वारा प्रार्थी को सेवा से पृथक किया गया। उन्होंने प्रदर्श एम–4 स्थायी आदेश, प्रदर्श एम–5 शक्तियों के प्रत्यायोजन सम्बन्धि आदेश और प्रदर्श एम–6 कार्यालय आदेश की और ध्यान आकृष्ट करते हुए यह कहा है कि किसी मूल प्राधिकृत अधिकारी के अनुपस्थिति रहने पर कार्यकारी अधिकारी को मूल अधिकारी की शक्तियां प्रयोग करने का अधिकार प्राप्त है। चूंकि प्रार्थी को विधिवतः सेवा से पृथक किया गया है और अब वह सेवानिवृत्ति आयु भी पार कर चुका है, उसे सेवा में पुनः लिये जाने और विगत वेतन प्राप्त करने का कोई अधिकार नहीं है। उन्होनें अपने तर्क के समर्थन में निम्नांकित न्यायिक दृष्टान्त प्रस्तुत किये :–

(1) 1996 ए.आई.आर. (S.C.) 2618 फाईजर लि. बनाम मजदूर कांग्रेस।

(2) 2014 एल.आई.सी. 451 (गुवाहाटी उच्च न्यायालय) खोगेन चन्द बोरा बनाम द स्टेट ऑफ आसाम व अन्य।

(3) 2010 (2) एस.एल.आर. 505 (कलकत्ता उच्च न्यायालय) श्री सुशील कुमार साहा बनाम यूको बैंक व अन्य।

(4) 2014 (1) जे.सी.आर. (झारखण्ड़ उच्च न्यायालय) गोरखनाथ बनाम सेन्ट्रल कोल फील्डस लिमिटेड़ रांची।

10. अभिभाषक प्रार्थी ने विपक्षी प्रतिनिधि के तर्कों का विरोध करते हुए यह कहा है कि विपक्षीगण प्रार्थी के विरूद्ध जारी किये गये आरोप पत्र के अतिरिक्त किसी अन्य आधार पर प्रार्थी को सेवा से पृथक नहीं कर सकते हैं। प्रार्थी के विरूद्ध आरोप पत्र स्थायी आदेश की धारा 39 (1) (iii) के अन्तर्गत कर्त्तव्य से आदतन अनुपस्थित रहने के सम्बन्ध में जारी किया गया है। इस

आधार पर प्रार्थी को सेवा से पृथक, किया ही नहीं जा सकता है। स्थायी आदेशों के नियम 39 (1) (iii) के अधीन जो दुराचरण वर्णित किये गये है उनमें अवकाश स्वीकृत कराये बिना या बिना समुचित कारण के आदतन अनुपस्थित रहने को इस प्रकार का दुराचरण नहीं माना गया है, जिसके आधार पर सेवा से पृथक करने का दण्ड दिया जा सकें। सेवा से पृथक करने का दण्डादेश सक्षम प्राधिकारी द्वारा जारी नहीं किया गया है, क्योंकि प्रार्थी की नियुक्ति कार्मिक अधिकारी द्वारा की गई है और सेवा समाप्ति का आदेश उप महाप्रबन्धक (खदान) द्वारा जारी किया गया है। प्रार्थी के कारागार में निरूद्ध होने का तथ्य विपक्षीगण के अभिज्ञान में सेवा समाप्त करने के पूर्व ही जांच के दौरान आ चुका था, क्योंकि प्रार्थी को डाक से भेजे गये पत्रों पर यह अंकन विद्यमान था ''कि प्राप्तकर्त्ता झून्झूनु कारागार में बन्द है, वापस भेजा।'' इस प्रकार विपक्षीगण यह नहीं कह सकते है कि प्रार्थी के जेल में रहने की उन्हें कोई सूचना नहीं थी। इसी कारण अधिकरण द्वारा जांच कार्यवाही को दूषित माना गया है। प्रार्थी के दोष सिद्ध किये जाने अथवा छः वर्ष तक कारागार में रहने के आधार पर प्रार्थी की सेवामुक्ति करने में विपक्षीगण सक्षम नहीं है क्योंकि ये तथ्य जांच के दौरान विद्यमान ही नहीं थे। अतः दावा स्वीकार कर प्रार्थी की निरंतर सेवा मान कर विगत परिलाभ प्रदान करने का आदेश पारित किया जावें। उन्होनें अपने तर्क के समर्थन में निम्नांकित न्यायिक दृष्टान्त प्रस्तुत किये :–

(1) ए.आई.आर. 1980 (S.C.) 2054 स्टील ऑथोरिटी इण्डिया बनाम पी.ओ. लेबर कोर्ट एट बौकारों स्टील सिटी धनबाद व अन्य

(2) 2011 (128) एफ.एल.आर. 421 एयर इण्डिया लिमिटेड मुम्बई बनाम शशीकला जाटव व अन्य

(3) 1999 (II) एल.एल.जे. 514 (S.C.) स्टेट बैंक ऑफ इण्डिया बनाम टी.जे. पॉल।

(4) (2015) 1 एस.सी.सी. (L&S) 251 छैलसिंह बनाम एम.जी.बी.ग्रामीण बैंक पाली व अन्य।

(5) 2013 (139) एफ.एल.आर. 541 दीपाली गुन्डु सर्वासे बनाम क्रान्ती जूनियर अध्यापक महाविद्यालय व अन्य।

(6) सिविल अपील नम्बर 6188/2019 जयन्ती भाई रावजी भाई पटेल बनाम म्यूनसिपल काउन्सिल नरखेड़ व अन्य निर्णय तिथि 21.8.2019 (सर्वोच्च न्यायालय)

11. उभयपक्ष के तर्कों, प्रस्तुत की गई साक्ष्य एवं विधिक दृष्टान्तों में पारित विधि पर मनन के पश्चात इस विवाद में निम्नांकित विचारणीय बिन्दु उत्पन्न हुए हैं जिनका क्रमिक निर्णय किया जा रहा है :–

बिन्दु संख्या 1 :– क्या विपक्षीगण प्रार्थी के विरूद्ध दिनांक 15.11.99 से 31.5.2000 तक बिना पूर्व सूचना दिये एवं अवकाश स्वीकृत करवाये, अनुपस्थित रहने का आरोप प्रमाणित करने में सफल हुए हैं ?

बिन्दु संख्या 2 :– क्या विपक्षीगण द्वारा आरोप प्रमाणित कर दिये जाने की दशा में प्रार्थी के विरूद्ध पारित दण्डादेश प्रमाणित स्थायी आदेशों की धारा 39 (1) (iii) के प्रावधानों के अनुरूप सक्षम प्राधिकारी द्वारा पारित किया गया है?

बिन्दु संख्या 3 :– अनुतोष ?

12. **<u>विचारणीय बिन्दु संख्या 1</u> :–** विपक्षी के साक्षी श्री पी.पी.एन.शर्मा ने अपने सशपथ कथन में यह कहा है कि हरीप्रसाद मिश्रा दिनांक 15.11.99 से अपनी ड्यूटी से निरन्तर बिना स्वीकृत अवकाश के अनुपस्थित था, इसलिये 21 जुलाई 2000 को उसके विरूद्ध आरोप पत्र घर के स्थायी पते पर भिजवाया गया। साक्षी का यह भी कथन है कि दिनांक 25.11.99 को श्रमिक ने डाक से बैक–डेटिंग करते हुऐ दिनांक 15.11.99 से 30.11.99 की अवधि के अवकाश के लिये पत्र प्रेषित किया था, जिसमें पारिवारिक परेशानी के कारण अवकाश चाहा गया था। प्रार्थी ने यह तथ्य जानबूझकर छिपाया था कि वह दिनांक 15.11.99 से ही पुलिस एवं न्यायिक अभिरक्षा में था। इस प्रकार वह दिनांक 15.11.99 से निरन्तर बिना अनुमति के कार्यस्थल से अनुपस्थित था और सेवामुक्ति के आदेश तक कभी उपस्थित नहीं हुआ। प्रार्थी श्रमिक के हाजरी रजिस्टर की प्रति प्रदर्श– एम 8 का उल्लेख करते हुए साक्षी ने कहा है कि इस रजिस्टर में दिनांक 15.11.99 से जून 2000 तक प्रार्थी की निरन्तर अनुपस्थिति दर्ज है। इस सम्बन्ध में साक्षी ने प्रदर्श– एम 11, प्रार्थी द्वारा प्रस्तुत जवाब का जवाब जो उसने क्षेत्रीय श्रमायुक्त केन्द्रीय जयपुर के समक्ष 23.12.2008 को प्रस्तुत किया है का उल्लेख भी किया है। उल्लेखनीय यह भी है प्रार्थी स्वंय ने प्रदर्श– एम 11 जवाब के जवाब पर स्वंय के हस्ताक्षर होना स्वीकार किया है, और पृष्ठ 2 पर ए से बी इबारत सही होना भी कहा है। इस जवाब के जवाब प्रदर्श– एम 11 में प्रार्थी ने यह लिखा है कि '' (प्रदर्श एम 11 का पेरा 2)'' क्योंकि प्रार्थी दिनांक 15.11.99 से 5.4.2003 तक न्यायिक अभिरक्षा में फौजदारी प्रकरण में रहा था। इस कारण इस दौरान प्रार्थी स्वंय द्वारा यूपीसी/रजिस्टर्ड पत्र द्वारा उक्त प्रार्थना पत्र भिजवाने का प्रश्न ही पैदा नहीं होता है। क्योंकि इस दौरान कोई भी पत्र भिजवाये जाते तो अधीक्षक कारागाह के माध्यम से ही भिजवाये जा सकते थे।

ऐसा प्रतीत होता है कि प्रार्थी के हस्ताक्षर शुदा कागजों का किसी व्यक्ति द्वारा उपयोग करते हुए उक्त पत्र प्रार्थी की और से उसकी जानकारी में लाये बगैर व बगैर सहमति के भिजवाये है।''

13. प्रार्थी से की गई प्रतिपरीक्षा में प्रार्थी ने प्रदर्श डब्ल्यू 2 तथा प्रदर्श डब्ल्यू 4 से 9 अवकाश प्रार्थना पत्रों पर स्वंय के हस्ताक्षर न होना कहा है और यह भी कहा है कि अवकाश का दर्शाये गये कारण ''घरेलू परेशानी'' का अंकन भी उसके द्वारा नहीं किया गया। प्रार्थी स्पष्ट कहता है कि अवकाश के सम्बन्ध में ऐसा कोई आवेदन उसने प्रस्तुत नहीं किया है। इन परिस्थितियों में यह भलीभांति स्पष्ट हो जाता है कि प्रार्थी ने दिनांक 15.11.99 को पुलिस द्वारा उसे अभिरक्षा में ले लिये जाने पर विपक्षी प्रबन्धन को वास्तविक कारण सूचित न करते हुए कोई अवकाश प्रार्थना पत्र प्रस्तुत नहीं किया। जो अवकाश प्रार्थना पत्र विपक्षीगण को डाक द्वारा प्रेषित किये गये वे प्रार्थी द्वारा हस्ताक्षरित नहीं थे एवं वास्तविक कारण दर्शाते हुए भी प्रेषित नहीं किये गये। प्रार्थी यदि दिनांक 15.11.99 को ही स्वंय का प्रार्थना पत्र वास्तविक तथ्यों का वर्णन करते हुऐ विपक्षीगण को प्रेषित करता तो विपक्षीगण द्वारा सम्भतः उसे तत्समय निलम्बित करते हुए अनुशासनिक कार्यवाही प्रारम्भ की जा सकती थी। प्रार्थी ने तो अपने दावे के चरण संख्या 8 में भी स्वंय के न्यायिक अभिरक्षा में होने का कारण प्रार्थना पत्र में वर्णित करने के स्थान पर पारिवारिक विषम स्थितियों और सामाजिक दायित्व की पूर्ति '' कारण दर्शाये हैं। इस प्रकार साक्ष्य के परिशीलन से प्रार्थी को दिनांक 15.11.99 से बिना अवकाश स्वीकृत कराये अथवा पूर्व सूचना दिये बिना अनुपस्थित रहना प्रमाणित होता है। प्रार्थी की अनुपस्थिति की अवधि आरोप पत्र प्रदर्श– एम 1 के अनुसार 30.6.2000 तक बिना अवकाश स्वीकृत कराये अनुपस्थित रहने के सन्दर्भ में है। जो प्रार्थी स्वंय की स्वीकृति, प्रदर्श– एम 8 उपस्थिति पंजिका और विपक्षी की अखण्डित साक्ष्य के आधार पर प्रमाणित है। जहॉ तक प्रार्थी के इस आक्षेप का प्रश्न है कि आरोप पत्र सक्षम अधिकारी द्वारा जारी नहीं किया गया, – साक्ष्य से प्रकट होता है कि प्रार्थी 210–320 रूपये के वेतनमान में 210 रूपये वेतन पर नियुक्त हुआ था। प्रदर्श एम 5 आदेश दिनांक 8.2.1980 से महाप्रबंधक ने संलग्न अनुसूची के अनुसार शक्तियों का प्रत्यायोजन किया है। इस अनुसूची मं मुख्य इंजीनियरों, उप महाप्रबंधकों व खान अधीक्षकों को रूपये 650 से 1200 वेतन तक के कर्मकारों की अनिवार्य सेवानिवृत्ति /सेवा पृथक्करण व बर्खास्तगी के सिवाय सभी शास्तियाँ आरोपित करने हेतु सशक्त किया गया है। अनुसूची के भाग–II में अनुशासनिक मामलों में विहित प्रधिकारियों को अनुशासनिक प्राधिकारी भी माना गया है, जो प्रार्थी के संदर्भ में मुख्य इंजीनियर (यांत्रिक) है। इन्ही आदेशों में यह प्रावधान भी है कि अनुशासनिक प्राधिकारी के वरिष्ठतर अधिकारी को भी अनुशासनिक प्राधिकारी की शक्तियाँ प्राप्त होगी। प्रार्थी को आरोप पत्र कार्यकारी मुख्य प्रबंधक (यांत्रिक) द्वारा जारी किया गया है जो मुख्य इंजीनियर (यांत्रिक) से वरिष्ठतर प्राधिकारी होने से आरोप पत्र जारी करने हेतु सक्षम प्रमाणित होता है। इस प्रकार प्रार्थी की ओर से प्रस्तुत यह आक्षेप सारवान नहीं है। इस प्रकार प्रार्थी की यह अनुपस्थिति स्थायी आदेशों की धारा 39 (1) (iii) के अन्तर्गत कदाचार प्रमाणित होती है। अतः यह बिंदु प्रार्थी के विरूद्ध निर्णीत किया जाता है।

14. **बिन्दु संख्या 2** :– इस बिन्दु के अन्तर्गत यह दृष्टव्य है कि क्या विपक्षीगण द्वारा आरोप प्रमाणित कर दिया जाने की स्थिति में पारित किया गया दण्ड़ादेश स्थायी आदेशों की धारा 39 (1) (iii) के प्रावधानों के अनुसरण में है। प्रदर्श– एम 1 प्रार्थी के विरूद्ध जारी किया गया आरोप पत्र दिनांक 21.7.2000 है। इस आरोप पत्र में प्रार्थी को यह सूचित किया गया है कि उसका दुराचरण स्थायी आदेशों की धारा 39 (1) (iii) के अन्तर्गत आदतन ड्यूटी से अनुपस्थित रहना है और तद्नुसार उसके विरूद्ध अनुशासनात्मक कार्यवाही की जानी हैं। प्रदर्श– एम 4 विपक्षी के प्रमाणित स्थायी आदेश हैं। विपक्षी से यही अपेक्षा है कि वह आरोप पत्र में वर्णित अनुशासनिक प्रावधानों के अनुरूप ही प्रार्थी के विरूद्ध कार्यवाही करें। प्रदर्श– एम 1 आरोप पत्र में मिथ्या सूचना देना या कोई सूचना ही नहीं देना अथवा किसी अपराध में दोष सिद्धी के उपरान्त कारावासित होने संबंधी कदाचार के आरोप नहीं लगाये गये है। इसलिये विपक्षी द्वारा जारी किये गये आरोप पत्र प्रदर्श– एम–1 में वर्णित कदाचार से परे किसी अन्य दुराचरण के सम्बन्ध में अनुशासनात्मक कार्यवाही किया जाना विधितः अपेक्षित नहीं था।

15. प्रमाणित स्थायी आदेशों की धारा 39 (1) में यह स्पष्ट प्रावधान है कि एक कर्मकार को उसके द्वारा किये गये कृत्यों/लोपों के लिये (इसी धारा की उपधारा 1 (i) से (iii) तक वर्णित) एक माह में 2 प्रतिशत मजदूरी की राशि के अर्थदंड से या चेतावनी अथवा परिनिन्दा के दण्ड से दण्डित किया जा सकता है। ऐसा अर्थदण्ड विहित प्राधिकारी द्वारा ऐसे कृत्यों अथवा लोपों के लिये अधिरोपित होगा, जो धारा 8 वेतन भुगतान अधिनियम के प्रावधानों के अनुसार अनुमोदित किया जावें।

16. धारा 39 की उपधारा (1) (iii) के अन्तर्गत बिना अवकाश स्वीकृत कराये आदतन अनुपस्थिति या बिना पर्याप्त कारण लगातार 10 दिन से अधिक अनुपस्थित रहने सम्बन्धि कृत्य/लोप का ही उल्लेख किया गया है। इस कृत्य अथवा लोप के लिये धारा 39 (1) के अन्तर्गत विपक्षीगण मात्र अर्थदण्ड, चेतावनी या परिनिन्दा का दण्ड ही प्रार्थी के विरूद्ध पारित कर सकते थे। प्रमाणित स्थायी आदेशों की धारा 39 (2) के अन्तर्गत दंड के रूप में कर्मकार की सेवासमाप्ति एवं बर्खास्त किये जाने का प्रावधान

किया गया है किन्तु प्रदर्श– एम 1 आरोप पत्र में विपक्षीगण ने धारा 39 (2) के अन्तर्गत वर्णित किसी दुराचरण का आरोप प्रार्थी कर्मकार के विरूद्ध लगाया ही नहीं है। इसलिये विपक्षीगण प्रार्थी के विरूद्ध प्रमाणित हुए आरोप के लिये धारा 39 (1) में किये गये प्रावधानों के अनुरूप ही दण्डादेश पारित करने को प्राधिकृत हैं, उससे परे नहीं। माननीय सर्वोच्च न्यायालय द्वारा स्टील ऑथोरिटी इण्डिया बनाम पी.ओ. लेबर कोर्ट धनबाद के निर्णय में यह अधिमत व्यक्त किया गया है कि जब कम्पनी के निर्मित नियम (जिन्हें निदेशक मण्डल ने अनुमोदित किया हो), मुख्य चिकित्सा अधिकारी को आरोप पत्र जारी करने एवं जांच समिति गठित करने हेतु प्राधिकृत नहीं करते हों तो ऐसी जांच समिति द्वारा दिये गये निष्कर्ष के आधार पर कर्मकार के विरूद्ध पारित सेवासमाप्ति का आदेश वैध नहीं है। इसी प्रकार एस.बी.आई. बनाम टी.जे.पॉल के निर्णय में माननीय सर्वोच्च न्यायालय ने यह कहा है कि जब सेवा नियमों में गम्भीर दुराचरण हेतु सेवासमाप्ति के दण्ड का प्रावधान नहीं हो तो बैक को अपने सेवा नियमों की परिसीमा में ही स्वंय को आबद्ध करना चाहिये– उल्लंघन होने पर दण्ड़ादेश में हस्तक्षेप अपेक्षित है। माननीय बम्बई उच्च न्यायालय ने भी एयर इण्डिया बनाम शशीकला जाटव के निर्णय में कहा है जब उपनिदेशक को कोई अनुशासनिक एवं अपीलीय शक्तियां प्राप्त ना हो तो कर्मकार के विरूद्ध पारित सेवासमाप्ति का आदेश वैध नहीं होगा।

17. इन निर्णयों में पारित विधि के प्रकाश में यह उल्लेखनीय है कि प्रदर्श– एम 5 आदेश जिसके साथ संलग्न अनुसुची के भाग प्रथम में चेयरमैन द्वारा उसके अधिनस्थ प्राधिकारीयों को, जिसमें महा प्रबन्धक/उपमहा प्रबन्धक /खान अधीक्षक/ मुख्य इन्जिनियर सम्मिलित हैं, को विभिन्न अनुशासनिक शक्तियां प्रत्यायोजित की गई है। इस तालिका के परिशीलन से यह स्पष्ट हो जाता है कि इन प्राधिकारियों को, जो भी अनुशासनिक शक्तियां प्रत्यायोजित की गई है उनमें अनिवार्य सेवानिवृत्ति, सेवा से पृथक्करण एवं बर्खास्तगी सम्मिलित नहीं है। प्रदर्श– एम 9 दण्ड़ादेश दिनांक 11.12.2000, उपमहाप्रबन्धक (खदान) अनुशासनिक प्राधिकारी द्वारा जारी किया गया है किन्तु प्रत्यायोजन आदेश प्रदर्श–एम–5 के अवलोकन से यह स्पष्ट हो जाता है कि उपमहाप्रबन्धक ही नहीं वरन् महाप्रबन्धक को भी प्रार्थी की सेवासमाप्त करते हुए उसे बर्खास्त करने की शक्ति प्रत्यायोजित नहीं की गई थी। विपक्षी की और से प्रस्तुत माननीय सर्वोच्च न्यायालय द्वारा पारित निर्णय फाईजर लि. बनाम मजदूर कांग्रेस में यह अधिमत व्यक्त किया गया है कि कंपनी के स्थाई आदेशों के अंतर्गत प्रबंधन, कर्मकार की बिना अवकाश स्वीकृत करवाये अप्राधिकृत अनुपस्थिति के आधार पर सेवासमाप्ति हेतु सक्षम है– तथ्यात्मक भिन्नता के कारण विपक्षी के तर्क को पुष्ट नहीं करता है क्योंकि दंड़ादेश स्थाई आदेशों के अनुसरण में पारित ही नहीं किया गया है। इसलिये प्रदर्श– एम 9 दण्ड़ादेश द्वारा प्रार्थी की सेवा समाप्ति करने का आदेश अनुशासनिक अधिकारी की शक्तियों से परें पारित किया जाना प्रमाणित होता है जो अवैध है। अतः यह बिंदु प्रार्थी के पक्ष में निर्णीत किया जाता है।

<u>विचारणीय बिन्दु संख्या 3 :– अनुतोष</u>

18. प्रार्थी के विरूद्ध पारित दण्ड़ादेश प्रदर्श– एम 9 अप्राधिकृत व्यक्ति द्वारा जारी दण्ड़ादेश प्रमाणित होने तथा प्रमाणित स्थायी आदेशों की धारा 39 (1) (iii) के प्रावधानों के विरूद्ध होने से प्रार्थी की सेवा समाप्त किया जाना अविधिपूर्ण प्रमाणित हुआ है। माननीय सर्वोच्च न्यायालय ने छैलसिंह बनाम एम.जी.बी.ग्रामीण बैंक पाली व अन्य के निर्णय में यह मार्गदर्शन दिया है कि एक बार सेवासमाप्ति का आदेश अपास्त कर दिये जाने पर, सेवा में पुनः स्थापन से इन्कार किये जाने के किसी आधार के अभाव में, कर्मकार स्वतः सेवा में पुनःस्थापित हो जाता है। इस स्थिति में प्रार्थी दिनांक 11.12.2000 से पुनः सेवा में पद स्थापित होने का अधिकारी प्रमाणित होता है। प्रार्थी की और से प्रार्थी की सेवा में निरन्तरता विगत वेतन परिलाभों सहित प्रदान करने का निवेदन किया गया है। इस सम्बन्ध में प्रार्थी की और से माननीय सर्वोच्च न्यायालय द्वारा पारित निर्णय दीपाली गुन्डु सर्वासे बनाम क्रान्ती जूनियर अध्यापक महाविद्यालय तथा जयन्ती भाई रावजी भाई पटेल बनाम म्यूनसिपल काउन्सील नरखेड़ में पारित अधिमत का अवलम्ब लिया गया है। इन निर्णयों में पारित विधि के अनुसार जब एक कर्मकार जो उसके नियोजक के अवैध कृत्य से पीडित हो, को विगत परिलाभों के भुगतान से इन्कार करना नियोजक को उक्त भुगतान के दायित्व से उन्मुक्त करते हुए पुरस्कृत करने जैसा होगा। किन्तु इन्हीं निर्णयों में माननीय उच्चतम न्यायालय ने यह भी कहा है कि सेवा में निरन्तरता तथा विगत वेतन भुगतान के साधारण नियम पर यह विबन्धन अवश्य है कि न्यायालय कर्मकार की सेवा अवधि, किये गये दुराचरण की प्रकृति तथा अन्य समान परिस्थितियों पर भी विचार करें। साधारणतः एक कर्मकार, जिसकी सेवासमाप्त कर दी गई हो तथा वह विगत वेतन प्राप्त करना चाहता हो, से यह अपेक्षा की जाती है कि वह अधिकरण के समक्ष न्यूनतम यह अभिवचन करें या सशपथ कथन करें कि वह सुसंगत अवधि में कहीं भी लाभप्रद नियोजन में नियोजित नहीं रहा है या किसी न्यूनतरः वेतन पर नियोजित रहा है। इस अभिवचन के उपरान्त यदि नियोजक विगत वेतन के भुगतान से बचना चाहता हो तो वह इस तथ्य का अभिवचनों मे माध्यम से खण्डन करें

एवँ विश्वसनिय साक्ष्य से यह भी प्रमाणित करें कि कर्मकार लाभार्जन हेतु नियोजित रहा है अथवा जितना वेतन उसे मिलता था उतना वह अर्जित कर रहा था। जब कर्मकार के विरूद्ध किसी कदाचार का आरोप प्रमाणित हो किन्तु दिया गया दण्ड कदाचार के समानुपातिक ना हो तो न्यायालय को यह विवेकाधिकार प्राप्त है कि वह पूर्ण विगत वेतन का भुगतान न दिलवाये। यदि आरोप प्रमाणित नहीं हुआ हो अथवा दुराशयः पूर्वक मिथ्या आरोप लगाया गया हो, तब ही पूर्ण वेतन भुगतान करवाना औचित्यपूर्ण होगा।

19. इन निर्णयों में पारित विधि एवं इस विवाद के तथ्यों एवं परिस्थितियों पर विचार के उपरान्त निम्नांकित परिदृश्य दृष्टिगत होता है ;

(1) प्रार्थी स्वंय के साक्ष्य के अनुसार वह दिनांक 15.11.99 से 14.2.2006 तक जिला कारागृह झून्झूनु में अभिरक्षा में निरूद्ध रहा है। प्रार्थी ने यह भी स्वीकार किया है कि उसने गिरफ्तारी के बाद विपक्षी को कोई अवकाश प्रार्थना पत्र न तो दिया और न हीं भिजवायां। उसने कोई सूचना विपक्षी को नहीं दी। प्रार्थी के कारागृह में रहने के कारण स्पष्ट रूप से, उसने विपक्षीगण के लाभार्थ कोई कार्य करते हुए सेवा नहीं दी।

(2) प्रार्थी ने न तो अपने दावे के अभिकथन में न हीं अपने साक्ष्य के शपथ पत्र में न्यायिक अभिरक्षा से उन्मुक्त होने के बाद भी अनियोजित रहने अथवा कोई लाभपूर्ण नियोजन प्राप्त न करने का कोई अभिवचन/कथन किया है। इस स्थिति में स्वभाविक रूप से विपक्षी को प्रार्थी के किसी लाभपूर्ण नियोजन में न रहने के तथ्य का प्रत्याख्यान एवं विखण्डन करने का कोई अवसर ही नहीं मिला। इसलिये यह उपधारित किया जा सकता है कि प्रार्थी कारागृह से छूटने के बाद किसी लाभपूर्ण नियोजन में रहा है तथा उसका अर्थोपार्जन सेवा के दौरान प्राप्त परिलाभ से न्यूनतर भी नहीं रहा।

20. विपक्षी की और से खोगेन चन्द बोरा बनाम स्टेट ऑफ आसाम के निर्णय में माननीय गोवाहाटी उच्च न्यायालय द्वारा पारित निर्णय का अवलम्ब लिया गया है। इस निर्णय में माननीय उच्च न्यायालय ने कहा है कि जब कर्मकार तीन वर्ष चार माह तक हत्या के अपराध में कारागृह में रहा हो किन्तु सन्देह का लाभ पाकर दोष मुक्त किया गया हो– तथा कर्मकार बिना सूचना/अवकाश स्वीकृति के अनुपस्थिति रहने का दोषी पाया गया हो, तो अनुशासनिक कार्यवाही के दंड के कारण यह नहीं कहा जा सकता कि उसे दो बार दण्डित किया गया है। अनुशासनिक जांच का हत्या के विचारण से कोई सरोकार नहीं है। कर्मकार अनुपस्थिति की अवधि का वेतन पाने को इसलिये अधिकृत नहीं है कि नियोजक को कर्मकार से कोई सेवा प्राप्त नहीं हुई।

21. गोरखनाथ बनाम सेन्ट्रल कोल फील्डस लिमिटेड़ रांची के निर्णय में माननीय झारखण्ड उच्च न्यायालय ने यह स्पष्ट कहा है कि जब कर्मचारी जेल में निरूद्ध रहने के कारण कर्त्तव्य पर अनुपस्थित रहा हो तो ''कार्य नहीं तो वेतन नहीं'' के सिद्धान्त के आधार पर उसे वेतन देय नहीं होगा। दाण्डिक प्रकरण किसी तृतीय पक्ष द्वारा संस्थित हुआ है। वह प्रबन्धन का दायित्व नही है। प्रबन्धन ने कर्मकार को कार्य करने से नहीं रोका है।

22. उभयपक्ष द्वारा प्रस्तुत निर्णयों में पारित विधि एवं तथ्यों पर विचार के पश्चात इस अधिकरण का यह सुविचारित अभिमत है कि चूंकि प्रार्थी अपने ही दुष्कृत्य के कारण अपने नियोजक को बिना सूचित किये एवं बिना अवकाश स्वीकृत कराये कारागृह में निरूद्ध रहा तथा प्रार्थी ने कारागृह से छूटने के पश्चात भी बेरोजगार रहने अथवा कम आय अर्जित करने सम्बन्धी कोई कथन नहीं किया एवं साक्ष्य प्रस्तुत नहीं की, इसलिये यह उपधारित किया जायेगा कि वह लाभ वाले नियोजन में कहीं अन्यत्र धनार्जन करता रहा। इस स्थिति में प्रार्थी को विगत वेतन एवं परिलाभ का भुगतान विपक्षी से करवाया जाना विधि– पूर्ण एवं न्यायोचित प्रतीत नहीं होता है।

23. उपयुर्क्त विवेचन के उपरान्त प्रार्थी (हरीप्रसाद मिश्रा) के विरूद्ध लगातार अनुपस्थित रहने के आरोप पर अधिकरण द्वारा की गई जांच के उपरान्त आरोप प्रमाणित हुआ है, किन्तु इस आरोप हेतु दिया गया दण्ड़ विपक्षी के प्रमाणित स्थायी आदेशों की धारा 39 (1) (iii) में विहित दण्ड़ के प्रावधान के अनुरूप न होने से न्यायोचित एवं विधि सम्मत नहीं है। अतः विपक्षीगण द्वारा पारित सेवासमाप्ति दण्ड़ादेश दिनांक 11.12.2000 को अपास्त करते हुए प्रार्थी को विपक्षी की सेवा में पुनः स्थापित किया जाता है। प्रार्थी दिनांक 15.11.99 से उसकी सेवा निवृत्ति की तिथि तक विगत वेतन एवं आर्थिक परिलाभ पाने का अधिकारी नहीं है। प्रार्थी द्वारा पुलिस/न्यायिक अभिरक्षा में व्यतित अवधि अर्हक सेवा के रूप में संगणनीय न मानते हुए विपक्षी, सेवा निवृत्ति की तिथि तक प्रार्थी

को प्रमाणित स्थायी आदेशों /सेवा नियमों के अनुरूप देय कल्पित पदोन्नति देते हुए, सेवानिवृत्ति परिलाभ की संगणना करें। तद्नुसार भुगतान तीन माह की अवधि में करें।

24. अधिनिर्णय तद्नुसार पारित किया जाता है। श्रम मन्त्रालय द्वारा इस मामले में न्यायनिर्णयन हेतु संदर्भित विवाद का उत्तर उपर्युक्तानुसार दिया जाता है।

25. अधिनिर्णय की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17 (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जावे।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 19 नवम्बर, 2019

का.आ. 2026.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स भारत पेट्रोलियम कार्पोरेशन लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, एनीकुलम के पंचाट (संदर्भ संख्या 10/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 5.11.2019 को प्राप्त हुआ था।

[सं. एल-30012/7/2011-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 19th November, 2019

S.O. 2026.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 10/2012) of the Central Government Industrial Tribunal/Labour Court, Ernakulam now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Bharat Petroleum Corporation Limited and their workman, which was received by the Central Government on 5.11.2019.

[No. L-30012/7/2011-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, ERNAKULUM

Present: Shri. V .Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Friday the 4th day of October 2019, 12 Asvina 1941)

ID No. 10/2012

Workman	:	Shri S. Jayakrishnan, House No. X/334, ThirumuppamVariam, N. Parur, Ernakulam- 693520.
		By Adv. Paulson C. Varghese
Management	:	The General Manager, BPCL, Kochi Refinery, Ambalamughal, Cochin.
		By Adv.Menon & Pai

This case coming up for final hearing on 7-8-2019 and this Tribunal-cum-Labour Court on 4-10-2019 passed the following

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-30012/7/2011-IR(M) dated 16-2-2012 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is

"Whether the action of the management of M/S BPCL Kochi Refinery with its headquarter at Mumbai in dismissing the services of Shri S.Jayakrishnan, Staff No. 84194, Cochin AFS vide order dated 8-4-2010 is legal and justified? What relief the workman is entitled to?"

3. It is seen that this Tribunal vide order dated 31-8-2012 passed a No Dispute Award in this case and is notified by Government of India in the Gazette dated 10-10-2012. The management filed IA No. 120/2012 to set-aside the exparte order dated 31-8-2012. This IA was allowed and the matter was restored to file for final adjudication.

4. The workman entered appearance and filed claim statement. The workman was employed as General Workman B in the management establishment. During 2002, the 2nd child of the workman was born with serious and complicated congenital problems and he was forced to take leave continuously to take care of his child and wife in the hospital. He was infact taking care of the family of his wife also and his mother-in-law also fell sick due to old age illness. Due to aforesaid reasons, he has taken all his eligible leave. Further his child died on 4-2-2006. After the demise of his child, his wife developed reactive depression which put the workman into severe problems. By that time his mother-in-law was also completely bed-ridden. His mother-in-law also expired during that period. The management initiated disciplinary action against the workman alleging that he took unauthorized leave without any permission. His unauthorized absence happened in the aforesaid circumstances. The plight of the workman was known to the management and they promised not to take any further action considering the situation of the workman. On 2-2-2009, his services were temporarily transferred to AFS Nedumbaserry Airport in the Marketing Division. Though the services of the workman was temporarily transferred to AFS, his service conditions, allowances and other terms of employment were governed by long term settlements which were applicable to the category of workman of BPCL. The workman was under the impression that the leave benefits are also governed by the long term settlements of his parent company, BPCL. The leave benefits at AFS and his parent organization BPCL were distinct and the leave benefits was rather much inferior to that of BPCL. Accordingly the workman has taken the eligible leave as if his leave rules are not changed. He was not informed of any change in this leave rules. The workman took 12 days leave with permission from the concerned officials during 9-2-2009. As per the leave rules in the AFS, he was entitled to avail more than 24 days privilege leave as he has already served more than 9 months at AFS without availing any leave. further an employee working at AFS is eligible for 8 days leave for every quarter. However as per the leave rules of BPCL, the workman is entitled to leave of 2 days eligible extra for 11 months service rendered. Hence the workman had not availed any unauthorized leave as alleged by the management. The services of the workman was apprised good by AFS Nedumbaserry.

5. The domestic enquiry conducted against the workman is done in complete violation of the principles of natural justice. He was not given full opportunity to establish his innocence. Even if the enquiry report is found to be valid, the charges proved against him are not grave enough to award the capital punishment of dismissal from service. There are many employees and trade Union leaders in the management who made unauthorisely absent but continued to be with the management even today. Disciplinary action was taken against the workman only because he was not part of any Union.

6. The management filed Written Statement denying the above allegations. The workman was employed in the manufacturing department of the management. The workman was dismissed from the service for his unauthorized absence of 97 days during the period 1-4-2007 to 31-12-2007 and 14 days during the period from 1-1-08 to 31-3-2008 and 165 days during the period from 1-4-08 to 31-12-2008. For the unauthorized absence for the period from 1-4-2007 to 31-3-2008, a showcause notice dated 20-6-2008 was issued to the workman. Since his explanation to the showcause notice was not satisfactory, a chargesheet was issued and an Enquiry Officer was appointed as per the Certified Standing Orders of the Company. Enquiry Officer conducted the enquiry complying with the provisions of natural justice and also as per the provisions of Certified Standing Orders and submitted his report. The workman fully participated in the enquiry, submitted defence evidence and produced defence documents. The Enquiry Officer submitted his report on 8-12-2008 finding that the charges against the workman are proved. For his unauthorised absence for the period from 1-4-08 to 31-12-08, another showcause notice dated 7-5-2009 was issued. Since the explanation given by the workman was not satisfactory another domestic enquiry was initiated as per the provisions of Certified Standing Orders, Clause 29.11 for habitual absenteeism. After conducting a proper enquiry complying with the provisions of natural justice, the Enquiry Officer submitted his findings on 22-8-2009. The Enquiry Officer found the charges proved against the workman. The copies of the above two Enquiry Reports were forwarded to the workman on 30-9-2009 giving him an opportunity to submit his representation on the findings of the Enquiry Officer. He submitted his reply on 15-10-2009. The Disciplinary Authority after perusing the Enquiry file, report and evidence on record, accepted the findings of the Enquiry Officer. The Disciplinary Authority also noticed that the workman was unauthorisely absent during earlier spells also from 2000 to 31-3-2007. He was also warned in the first instance and punishment of reversion to the lowest basic pay in the same scale of pay was awarded on 31-12-2007. The Disciplinary Authority after considering all the above facts proposed a penalty of "dismissal from service of the company". Even in the representation against the proposed punishment, the workman did not give any valid and convincing reasons for his actions. Hence the workman was dismissed from service vide order dated 8-4-2010. The family problems faced by workman is not a valid ground for

unauthorized absence for pretty long time. The workman was deputed to AFS, Nedumbaserry on 2-2-2009 only after the disciplinary action was taken for unauthorized absence from 1-4-2007 to 31-12-2008. The domestic enquiry was conducted fully complying with the principles of natural justice and in accordance with the Certified Standing Orders of the company. The workman fully participated in both the enquiries and examined himself as defence witness, submitted defence evidence and produced defence documents. The punishment of dismissal awarded to the workman is proportionate to the gravity of the misconduct committed by him. Maximum leniency was given to the workman and he doesnot deserve any further leniency for the offence proved against him. The management has not resorted to any unfair labour practice. There is no arbitrariness in the matter of taking disciplinary action. In case the Tribunal finds that the enquiry is vitiated for any reason, the management may be given an opportunity to prove the charges against the workman by adducing additional evidence.

7. The workman filed rejoinder denying the allegations in the written statement. He asserted that his leave of absence from 1-1-2008 to 31-8-2008 was not unauthorized. He has availed only the available leave to his credit. The workman further reiterated that the charges even if it is proved donot warrant an extreme punishment of dismissal from the service.

8. On completion of pleadings, the Enquiry Officer was examined as MW-1 and the Enquiry files were marked as Exhibit M-1 & M-2.

9. Having completed pleadings, the issues to be decided in the ID are:-

(1) Whether the enquiry conducted against the workman was proper and legal?

(2) Whether the punishment awarded by the Disciplinary Authority is proportionate to the charges proved against the workman?

(3) Relief?

10. Issue No. 1-

The issue whether the disciplinary enquiry was conducted in a fair and proper manner and following principles of natural justice was taken up as a preliminary issue. It is seen that there is no serious dispute regarding the fact that the workman was unauthorisely absent for pretty long period during 2007-2008. The first chargesheet is issued for unauthorized absence of 130 days from 1-4-2007 to 31-3-2008. Since the explanation of the workman dated 3-7-08 was found to be unsatisfactory, it was decided to hold the domestic enquiry into the misconduct and a chargesheet and notice of enquiry dated 28-8-2008 was issued to the workman for the misconduct of habitual absenteeism(Clause 29.11 of Certified Standing Orders). An Enquiry Officer was appointed, he read out the charges and explained the same to the workman. The workman participated in the enquiry, appeared as defence witness, submitted defence evidence and produced 3 defence documents. The Enquiry Officer submitted his report dated 2-12-2008 finding that the workman was unauthorisely absent for 111 days during the period from 1-4-2007 to 31-3-2008. Another showcause notice was issued to the workman for his unauthorized absence of 165 days from 1-4-08 to 31-12-2008 along with the abstract of the attendance records. His explanation dated 26-5-2009 was found to be unsatisfactory and the management decided to hold domestic enquiry against a chargesheet dated 19-6-2009 issued to him for habitual absenteeism under Clause 29.11 of Certified Standing Orders. An independent Enquiry Officer was appointed to conduct the enquiry. A Presenting Officer was also appointed in the matter. The Presenting Officer introduced the documents in the enquiry. The workman participated in the enquiry, appeared as defence witness and produced defence documents. The Enquiry Officer returned the finding that the charges against the workman are proved. Copies of the above two enquiry reports were forwarded to the workman on 30-9-2009 and he submitted his representation on the above two enquiry reports on 15-10-2009. The Disciplinary Authority found that the enquiry was conducted in a fair and proper manner and the explanation by the workman was not satisfactory. The Disciplinary Authority also noticed that the workman was a habitual absentee and he was also punished earlier for his unauthorized absence. After considering all the above facts, the Disciplinary Authority proposed the punishment of dismissal of service from the company. The workman was directed to offer his comments on the proposed punishment. The explanation submitted by him was not convincing and there was no extenuating circumstance to award a lesser punishment. After considering all the above factors, the Disciplinary Authority imposed a punishment of dismissal from the service of the company.

11. On a perusal of Exhibit M-1 & M-2 Enquiry files, it is seen that the Enquiry Officer conducted the proceedings as required under provisions of Certified Standing Orders of the company. The charges levelled against the workman was explained to him by the Enquiry Officer at the initial stages of the proceedings. He was allowed to cross-examine the management witness which he did not do. The workman was allowed to engage his own defence assistant and produce documents on his side. The workman examined himself as a witness in the enquiry and adduced defence documents which were considered by the Enquiry Officer. The charges levelled against the workman are of such nature

that it can be proved through documentary evidence. Hence it is seen that there is no denial of opportunity to the workman in both the enquiries.

12. Hence I am inclined to conclude that the enquiry conducted against the workman by the management was fair and proper and following the principles of natural justice. A preliminary order to that effect was issued on 15-7-2019.

Hence Issue No.1 is decided in favour of the management and against the workman.

13. Issue No. 2-

Having found that the enquiry was conducted in a fair and proper manner, the scope of interference with the punishment awarded to the workman is very limited. The counsel for management argued that the workman was a chronic absentee and he was also chargesheeted on earlier occasions for the same offence. However there is no improvement in his attendance. The counsel for the workman pleaded that, viewed from any angle, the ultimate punishment of dismissal from the company for absenteeism is shockingly disproportionate and is required to be interfered by this Tribunal. The workman through various letters communicated to the management the circumstances which warranted him to stay away from the company. According to him, his 2nd child was born with congenital issues which required prolonged treatment in the hospital. It was also pleaded by the workman that the child died inspite of the best efforts taken by him. The counsel for the workman also pointed out that during the course of treatment of his child, his mother-in-law, who was staying with him, also fell sick and the workman was the only person to take care of the family. His mother-in-law also expired after long treatment. As per Clause 30.5 of the Certified Standing Orders, the management ought to have considered these extenuating circumstances before awarding this extreme punishment of dismissal from service. The management has not denied any of the pleadings of the workman.

14. Hence in the circumstances of the case, I am inclined to hold that the punishment awarded to the workman by the management is shockingly disproportionate to the charges proved against him.

Hence issue No. 2 is decided in favour of the workman and against the management.

15. Issue No. 3-

It has come out in evidence that the workman had a satisfactory record of service inspite of his unauthorized absence in the company. It has also come out in evidence that his attendance has improved inspite of short spells of absenteeism. It is felt that the workman should be given one more opportunity to improve himself and tender his service to the management company.

16. Considering all the above circumstances, it is felt that interest of justice would be met if the workman is reinstated in service without backwages but with continuity of service.

Hence the issue is decided in favour of the workman and against the management.

Considering all the facts, circumstances, pleadings and evidence, an Award is passed holding that the dismissal of the workman from Cochin AFS vide order dated 8-4-2010 is disproportionate to the charges proved against him and he is directed to be reinstated in service with continuity of service but without backwages.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 4th day of October, 2019.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the workman	-	Nil
Witness for the Management	-	
MW-1 Shri K.N.Madhava Pai on 19-3-2019		
Exhibits for the workman	-	Nil

Exhibits for the Management:-

M1 - Enquiry File Vol-2

M-2 - Enquiry File Vol-1

नई दिल्ली, 19 नवम्बर, 2019

का.आ. 2027.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स राजस्थान राज्य टंगस्टन विकास निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 07/1993) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.11.2019 को प्राप्त हुआ था।

[सं. एल-25012/34/1992-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 19th November, 2019

S.O. 2027.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 07/1993) of the Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Rajasthan State Tungsten Development Corporation and their workman, which was received by the Central Government on 19.11.2019.

[No. L-25012/34/1992-IR(M)]

D. K. HIMANSHU, Under Secy.

अनुबंध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

पीठासीन अधिकारी :— सतीश कुमार व्यास,जिला न्यायाधीश संवर्ग

केस नंबर सी.आई.टी. 07/93,

सी.आई.एस. 29/2018,

रैफरैंस: केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक एल.—25012/34/92-IR [Misc] Whereas the central Government dated-5-5-93-

श्री मोहनसिंह पुत्र श्री छगनसिंह, निवासी गांव—झगडवास, पोस्ट—डेगाना, जिला—नागौर ...प्रार्थी यूनियन

बनाम

1. डायरेक्टर इन्चार्ज, राजस्थान राज्य टंगस्टन विकास निगम, खनिज भवन, ...तिलकमार्ग,जयपुर

2. हिन्दुस्तान जिंक लिमिटेड, डेगाना टंगस्टन प्रोजेक्ट, डेगाना, जिला नागौर (राज.) ...विपक्षीगण

उपस्थित :

प्रार्थी की ओर से : कोई उपस्थित नहीं हैं

अप्रार्थी की ओर से : कोई उपस्थित नहीं हैं

अधिनिर्णय

दिनांक : 27.03.2019

1. केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली से उपरोक्त आदेश के जरिये निम्न अनुसूची का विवाद अधिनिर्णय हेतु इस अधिकरण को दिनांक 13.5.93 को प्राप्त हुआ है।

2. "Whether the action of the Management of R.S.T.D.C. Degana Unit, Dist.Nagaur, in not allowing the Site Mate Shri Mohan Singh Rathore to join his duties on 18.7.85 and there after terminating his services through termination order dated 10.1.86 published in Dainik Navjyoti dated 11.1.86 is justified, proper & Legal ? If not,to what relief the workman is entitled ?''

3. प्रकरण दर्ज रजिस्टर किया जाकर उभय पक्षकारान को नोटिस जारी किए गए। प्रार्थी की ओर से केन्द्रीय श्रम विभाग द्वारा अधिनिर्णयार्थ प्रेषित अधिसूचना के संदर्भ में स्टेटमेंट ऑफ क्लेम विपक्षी डायरेक्टर इन्चार्ज, राजस्थान राज्य टंगस्टन विकास निगम, खनिज भवन, तिलक मार्ग, जयपुर के विरुद्ध दिनांक 8.9.93 को न्यायाधिकरण के समक्ष प्रस्तुत कर अभिकथन किया गया कि प्रार्थी श्रमिक की नियुक्ति दिनांक 1.4.1974 को वेतन श्रृंखला 420—740 में साइटमेट के पद पर अप्रार्थी संस्थान में हुई थी, जो तत्समय माइन्स एण्ड जियोलॉजी विभाग, राजस्थान सरकार के अधीन था। सन 1974 में प्रार्थी संस्थान मय श्रमिकों तथा उनकी समस्त लेनदारियों व देनदारियों के तत्समय विद्यमान राजस्थान खनिज तथा औद्योगिक विकास निगम को सौंपा गया तथा सन

1979 में उक्त संस्थान को राजस्थान राज्य खनिज विकास निगम के अधीन दिया गया और 1984 में उक्त संस्थान राजस्थान राज्य टंगस्टन विकास निगम लि. को हस्तांतरित कर दिया गया। उसके बाद अप्रार्थी सं.1 ने प्रार्थी श्रमिक को आरोप पत्र सं. 2275 दिनांक 24.5.85 जारी किया, जिसमें प्रार्थी श्रमिक पर 8 आरोप लगाये गये थे, जिसका उसने जवाब दिनांक 3.6.85 को प्रेषित करते हुये सभी आरोपों को बेबुनियाद, मनगढंत, निराधार व अस्पष्ट होना बताते हुये अस्वीकार किया। उसके पश्चात दिनांक 6.7.85 को भी एक अन्य आरोपपत्र उसे दिया गया जिसमें बिना अनुमति अपनी डयूटी से अनुपस्थित रहने का आरोप लगाया गया, जिसका भी प्रार्थी ने जवाब दिनांक 18.7.85 को प्रस्तुत कर दिया तत्पश्चात दिनांक 27.9.85 को उसे एक आरोपपत्र बिना सूचना के डयूटी से अनुपस्थित रहने बाबत और दे दिया गया,जिससे भी प्रार्थी ने जवाब प्रस्तुत कर अस्वीकार कर दिया गया। जिनकी जांच करने हेतु जांच अधिकारी की नियुक्ति की गई, जिसमें प्रार्थी श्रमिक को सुनवाई का पर्याप्त अवसर नहीं दिया गया और आरोपों को जांच से सिद्ध मानते हुये प्रार्थी को सेवा से पृथक करने का दण्ड प्रदान किया गया,जो कि निम्न आधारों पर अवैध है, क्योंकि आरोपों में लिये गये बयान तथा दस्तावेजात की नकलें तथा साक्षीगण व दस्तावेजात की सूची प्रार्थी श्रमिक को आरोपपत्र के साथ नहीं दी गई तथा लगाये गये आरोप मनगढंत एवं अस्पष्ट हैं। अतः प्रार्थी का स्टेटमेंट ऑफ क्लेम स्वीकार किया जाकर श्रमिक का सेवा पृथक्करण आदेश दिनांक 10.1.86 अपास्त करते हुये श्रमिक को दिनांक 18.7.85 से पूर्ण वेतन प्राप्त करने का अधिकारी घोषित किया जाये तथा सेवा की निरंतरता मानते हुये सभी देय लाभ परिलाभ दिलाये जाने के आदेश चाहे गये हैं।

4. अप्रार्थीगण की ओर से उपरोक्त स्टेटमेंट ऑफ क्लेम का जवाब प्रस्तुत करते हुये अभिकथन किया गया है कि प्रार्थी मोहनसिंह की सेवाऐं पूर्व में ही दिनांक 10.1.86 को समाप्त की जा चुकी थी।अतः वे अप्रार्थी सं. 2 के नियोजन में कभी नहीं रहे, इसलिए अप्रार्थी सं. 2 वाद में आवश्यक पक्षकार नहीं होने का उल्लेख करते हुये वर्णित किया कि प्रार्थी दैनिक वेतन पर मेट हैल्पर के पद पर नियुक्त किया गया था, जिसको दिनांक 1.4.78 से वेतन श्रृंखला 295–500 में नियमित किया गया तथा उसके पश्चात समय समय पर संशोधित वेतन श्रृंखलाओं का लाभ देते हुये उसका वेतन निर्धारण किया गया। प्रार्थी श्रमिक ने आरोपपत्र दिनांक 24.5.85 के प्रसंग में सम्पन्न जांच प्रक्रिया में जांच अधिकारी के समक्ष उपस्थित होकर स्वयं का बचाव पक्ष प्रस्तुत किया था, उसने गवाहों से जिरह की व स्व यं के गवाहों के बयान कराये जिनसे अप्रार्थी के प्रतिनिधि ने जिरह की, इस प्रकार जांच एकपक्षीय नहीं होना बताते हुये अभिकथन किया है कि जांच में दोषी पाये जाने पर जांच प्रतिवेदन अनुशासनिक अधिकारी के समक्ष प्रस्तुत किया जाने पर उसे सेवा से पृथक किया गया है। इस प्रकार प्राकृतिक न्याय के सिद्धांतों के अनुसार समस्त कार्यवाही की जाकर दण्डादेश पारित किया गया है। प्रार्थी श्रमिक को किसी प्रकार का लाभ प्राप्त करने का अधिकारी नहीं होना बताते हुये उसका स्टेटमेंट ऑफ क्लेम खारिज किये जाने की प्रार्थना की है।

5. इस प्रक्रम पर प्रार्थी श्रमिक के विद्वान प्रतिनिधि ने जाहिर किया कि प्रार्थी की उनके पास कोई सूचना नहीं है और न ही उसका कोई पता है। अप्रार्थी के विद्वान प्रतिनिधि भी उपस्थित नहीं हैं।

6. चूंकि पत्रावली काफी लंबे समय से बहस में नियत है। अतः पत्रावली का अवलोकन किया।

7. प्रार्थी श्रमिक ने रेफरेन्स इस आशय का प्रस्तुत किया कि उसका दिनांक 10.1.86 का दैनिक नवज्योति अखबार में प्रकाशित सेवा पृथक्करण का आदेश सही है अथवा नहीं ?

8. इस पर न्यायाधिकरण ने उभय पक्ष को सुनकर श्रमिक के विरुद्ध की गई जांच को सही एवं शुद्ध होना पाया था। जांच कार्यवाही में प्रार्थी श्रमिक ने अपनी उपस्थिति दी। हालॉकि उसने यह प्रतिरक्षा ली थी कि वह यूनियन के कार्य से बाहर रहता है, जबकि जांच में उस पर यह आरोप था कि वह डयूटी पर उपस्थित नहीं रहता है और अपनी डयूटी से अलग रहता है, किन्तु विभागीय जांच में उसने किसी प्रकार की उपस्थिति नहीं दी और न ही यह स्पष्ट किया कि वह यूनियन के काम से बाहर गया था। जांच में साक्षीगण ने उसे नोटिस तामील करवाने बाबत साक्ष्य दी और उसने रजिस्ट्री ली भी नहीं और लेने से इन्कार कर दिया।

9. इस प्रकार उपलब्ध साक्ष्य से स्पष्ट होता हैं कि प्रार्थी श्रमिक माह अप्रेल में 6 दिन,मई में 5 दिन व जून में 4 दिन ही कार्य पर आया था और उसने किसी प्रकार का कोई प्रार्थनापत्र भी नहीं दिया। इस प्रकार यह प्रमाणित है कि प्रार्थी श्रमिक जानबूझकर अपने कर्तव्य पर उपस्थित नहीं हुआ। विभागीय जांच में उसके विरुद्ध आरोप को जांच में प्रमाणित पाया गया। अनुशासनिक अधिकारी ने सुनवाई करने के बाद जो सेवापृथक्करण का आदेश पारित किया है, वह हमारी राय में बिलकुल सही है।

10. अतः उपरोक्त विवेचन के आधार पर इस प्रकरण में निम्न अवार्ड पारित किया जाना न्यायोचित है, जो इसी अनुरुप पारित किया जाता है।

अवार्ड

11. अतः राजस्थान जिंक लिमिटेड के प्रबन्धन द्वारा श्रमिक श्री मोहनसिंह की दिनांक 10.01.86 से की गई सेवामुक्ति उचित एवं वैध है तथा उक्त श्रमिक किसी प्रकार की राहत पाने का अधिकारी नहीं है। मामले के तथ्यों व परिस्थिति में पक्षकारान खार्चा अपना–अपना स्वयं वहन करेगें।

12. अधिनिर्णय लिखाया जाकर आज दिनांक 27.3.2019 को हस्ताक्षर कर सुनाया गया। अधिनिर्णय की प्रति केन्द्र सरकार को प्रकाशनार्थ नियमानुसार प्रेषित की जावे।

सतीश कुमार व्यास, न्यायाधीश

नई दिल्ली, 19 नवम्बर, 2019

का.आ. 2028.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स उदयपुर मिनरल डेवलपमेंट सिन्डीकेट प्रा. लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 11/1992) को प्रकाशित करती है जो केन्द्रीय सरकार को 19.11.2019 को प्राप्त हुआ था।

[सं. एल-29012/74/1991-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 19th November, 2019

S.O. 2028.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 11/1992) of the Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Udaipur Mineral Development Syndicate Pvt. Ltd. and their workman, which was received by the Central Government on 19.11.2019.

[No. L-29012/74/1991-IR(M)]

D. K. HIMANSHU, Under Secy.

अनुबंध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर

केस नं. सी.आई.टी. 11/1992

रैफरैंस : केन्द्र सरकार, श्रम मंत्रालय, नई दिल्ली का आदेश क्रमांक

एल–29012/74/91– आई.आर. (विविध) दिनांक 16.06.1992

श्री जहान सिंह पुत्र श्री हीरा सिंह, ग्राम एवं पोस्ट–सलैमपुर कलां,
वाया बल्लभगढ, तहसील वैर, जिला–भरतपुर ...प्रार्थी

बनाम

चीफ एक्जीक्यूटिव, मै. उदयपुर मिनरल डैवलपमैंट सिन्डीकेट प्रा. लि., भीलवाड़ा ...अप्रार्थी

उपस्थित

पीठासीन अधिकारीः श्रीमति रूपा गुप्ता, आर.एच.जे.एस.

प्रार्थी की ओर से : श्री आर. सी. जैन

अप्रार्थी की ओर से : श्री रूपिन काला

दिनांक अवार्ड : 03. 09. 2019

अधिनिर्णय

भारत सरकार के श्रम मंत्रालय की उपरोक्त आज्ञा क्रमांक से निम्न अनुसूची का विवाद अधिनिर्णय हेतु इस अधिकरण को प्राप्त हुआ है –

"क्या चीफ एक्जीक्यूटिव वर्कस, उदयपुर मिनरल डवलपमेंट सिंडीकेंट, भीलवाड़ा के द्वारा श्रमिक श्री जहान सिंह को दिनांक 12.7.91 से सेवा से बर्खास्त किया जाना उचित एवं वैद्य है, यदि नहीं तो श्रमिक किस लाभ का अधिकारी है?"

उक्त निर्देश इस अधिकरण को प्राप्त होने पर प्रकरण दर्ज रजिस्टर किया जाकर उभय पक्षकारान् को नोटिस जारी किये गये। प्रार्थी श्रमिक की ओर से स्टेटमेंट ऑफ क्लेम पेश कर अभिकथन किया है कि प्रार्थी की नियुक्ति विपक्षी संस्थान में 7.4.1987 को मैकेनिकल इंचार्ज के पद पर हुई थी। दिनांक 20.5.91 तक प्रार्थी ने विपक्षी के यहां निरन्तर कार्य किया तथा उसका कार्यकाल संतोषप्रद रहा है। दिनांक 21.5.91 से 13.6.91 तक विपक्षी संस्थान में हड़ताल रही। दिनांक 14.6.91 को प्रार्थी द्वारा ड्यूटी पर जाने पर उसे ड्यूटी पर नहीं लिया गया। प्रार्थी की बहिन के पुत्र की शादी होने से प्रार्थी ने दिनांक 24.6.91 से 7.7.91 तक का अवकाश प्रार्थना देकर चला गया, जहां पर वह बीमार होने से दिनांक 21.7.91 तक बीमार रहा। इस बीच प्रार्थी को दिनांक 15.7.91 को पंजीकृत डाक से एक पत्र मिला जिसमें उसका नाम मस्टरोल से काटे जाने तथा दिनांक 12.7.91 से नौकरी से

बर्खास्त करने की सूचना दी गई। प्रार्थी श्रमिक को नौकरी से निकालने से पूर्व विपक्षी संस्थान द्वारा उसे कोई आरोप पत्र नहीं दिया गया और न ही कोई घरेलू जांच की गई। विपक्षी संस्थान द्वारा उसे सेवामुक्त करने से पूर्व कोई नोटिस व नोटिस वेतन नहीं दिया गया। प्रार्थी को सेवामुक्त करते समय विपक्षी संस्थान में प्रार्थी से जूनियर श्रमिक कार्यरत थे तथा अब भी कार्यरत है तथा विपक्षी द्वारा नये श्रमिकों की भी भर्ती की गई है। विपक्षी संस्थान द्वारा औद्योगिक विवाद अधिनियम की धारा 25 एफ, 25 जी, एवं 25 एच तथा औद्योगिक विवाद अधिनियम के नियम 77 व 78 का उल्लंघन किया गया है, जो अनुचित व अवैध है। अन्त में प्रार्थी श्रमिक ने उसकी सेवा को निरन्तर मानते हुये उसे पुनः सेवा में लिये जाने तथा पूर्ण वेतन लाभ दिलाये जाने की प्रार्थना की है।

विपक्षी संस्थान की ओर से स्टेटमेंट ऑफ क्लेम का जवाब पेश कर अभिकथन किया है कि प्रार्थी श्रमिक की विपक्षी संस्थान में अप्रेल 1987 में नियुक्ति अवश्य हुई थी लेकिन उसे दिनांक 1.4.89 से मैकेनिकल इंचार्ज की नियमित वेतन श्रृंखला पर निर्धारित किया गया है। प्रार्थी का कार्यकाल संतोषप्रद नहीं रहा है। विपक्षी संस्थान में सभी माइंस व ग्राइण्डिंग यूनिट पर खान मजदूर कांग्रेस भीलवाड़ा द्वारा हड़ताल करवाये जाने पर प्रार्थी श्रमिक भी दिनांक 21.5.91 से 13.6.91 तक हड़ताल पर रहा था। हड़ताल समाप्ति पर दिनांक 14.6.91 को प्रार्थी विपक्षी संस्थान में ड्यूटी पर उपस्थित नहीं हुआ और बिना सूचना व अवकाश स्वीकृत कराये बिना अपने कार्य से दिनांक 13.6.91 से 12.7.91 तक गैर हाजिर रहा। प्रार्थी श्रमिक को अपनी ड्यूटी से दिनांक 13.6.91 से बिना सूचना व अवकाश स्वीकृति के अनुपस्थित होने से विपक्षी के स्थाई आदेश 11 (ख) की उपधारा 7 के अनुसार दिनांक 26.6.91 को एक नोटिस क्रमांक 1095 जारी कर तीन दिवस के अंदर ड्यूटी पर उपस्थित होने का निर्देश दिया गया। उक्त नोटिस प्रार्थी को दिनांक 1.7.91 को प्राप्त हो गया लेकिन उसके बाद भी प्रार्थी ड्यूटी पर उपस्थित नहीं हुआ। जिससे विपक्षी संस्थान द्वारा निगम के स्थाई आदेश के तहत यह मानते हुये कि प्रार्थी सेवा का इच्छुक नहीं है, उसे आदेश दिनांक 12.7.91 से सेवापृथक कर दिया गया। प्रार्थी द्वारा अवकाश हेतु कोई प्रार्थना पत्र विपक्षी को नहीं दिया गयां। प्रार्थी के नोटिस बाद तामील होने के बाद भी उपस्थित नहीं होने पर उसके विरूद्ध जांच किये जाने का कोई औचित्य नहीं था। प्रार्थी पर औद्योगिक विवाद अधिनियम की धारा 25 जी व एच या औ.वि.अधि. 1958 के नियम 77 व 78 लागू नहीं होते हैं। विपक्षी द्वारा अधिनियम के किसी प्रावधान का उल्लंघन नहीं किया गया है। प्रार्थी श्रमिक का सेवामुक्ति आदेश उचित एवं वैध है। अंत में प्रार्थी का स्टेटमेंट ऑफ क्लेम खारिज किये जाने की प्रार्थना की है।

विपक्षी संस्थान द्वारा दिनांक 8.8.95 को प्रार्थी श्रमिक के दुराचरण को सिद्ध करने बाबत् साक्ष्य पेश करने का अवसर चाहने पर न्यायाधिकरण के आदेश दिनांक 7.9.1996 द्वारा प्रार्थी श्रमिक पर लगाये गये आरोप के संबंध में साक्ष्य पेश करने की अनुमति दी गई। विपक्षी की ओर से साक्ष्य में गवाह श्री जे.पी. जैन एवं भूरालाल शर्मा का शपथ पत्र पेश हुआ है जिनसे प्रार्थी प्रतिनिधि द्वारा जिरह की गई। दस्तावेजी साक्ष्य में विपक्षी की ओर से दस्तावेजात् प्रदर्श एम–1 लगायत एम–8 प्रदर्शित हुये हैं। प्रार्थी श्रमिक की ओर से कोई साक्ष्य पेश नहीं होने पर न्यायाधिकरण के आदेश दिनांक 24.2.1999 द्वारा साक्ष्य प्रार्थी बंद की गई। न्यायाधिकरण के आदेश दिनांक 27.2.2004 द्वारा प्रार्थी की साक्ष्य खोले जाने बाबत् प्रस्तुत प्रार्थना पत्र खारिज किया गया।

विपक्षी की ओर से प्रस्तुत गवाह श्री जे.पी. जैन एवं श्री भूरालाल शर्मा ने अपनी साक्ष्य के मुख्य परीक्षण में स्टेटमेंट में उल्लेखित तथ्यों को दोहराया गया है। प्रतिपरीक्षा में श्री जे.पी. जैन ने कथन किया है कि वह 1 जनवरी 1990 से सितम्बर 92 तक चीफ एक्जीक्यूटिव के पद पर रहा। श्रम समझौता अधिकारी ने हड़ताल को अवैधानिक घोषित किया था, आदेश यहां पेश नहीं है। जहान सिंह को दिनांक 26.6.91 को ड्यूटी पर उपस्थित होने का नोटिस दिया गया, उससे पहले कोई नोटिस नहीं दिया गया। दिनांक 25.6.91 को जहान सिंह का कोई पत्र नहीं आया, लिफाफे में खाली कागज आया था। दिनांक 26.6.91 के नोटिस, दिनांक 12.7.91 के पत्र की रजिस्ट्री की रसीद, ए.डी. यूपीसी रसीद पेश नहीं की है। जहान सिंह ने 6.7.91 के पत्र द्वारा अवकाश प्रार्थना पत्र व डयूटी ज्वाईन की सूचना भेजी होगी, लेकिन मेरे पास नहीं आई। उसे मांइस मैनेजर को सूचना देनी चाहिये थी। दिनांक 12.7.91 के पत्र से पहले मांइस मैनेजर ने उसे लिखित में 9.7.91 के पत्र द्वारा यह सूचना भेजी थी कि जहान सिंह ड्यूटी से अनुपस्थित चल रहा है।

साक्षी श्री भूरालाल शर्मा ने भी प्रतिपरीक्षा में कथन किया है कि यह गलत है कि प्रार्थी दिनांक 13.6.91 के बाद ड्यूटी पर आया हो और उसे ड्यूटी पर नहीं लिया हो। घेवरिया ग्राईण्डिंग यूनिट पर कार्यरत श्रमिक अपना अवकाश प्रार्थना पत्र घेवरिया भेजते हैं और वहां से उसके पास आते हैं। प्रदर्श डवल्यू–1 कार्यग्रहण कराने बाबत् प्रार्थना पत्र घेवरिया से फॉरवार्ड होकर नहीं आया इसलिये गवाह ने कहा है कि उक्त प्रार्थना पत्र घेवरिया में पेश नहीं किया। घेवरिया के रिसीब्ड रजिस्टर में इसका एन्ट्री नहीं है। रिसीब्ड रजिस्टर कोर्ट में पेश नहीं किया है। यह गलत है कि जहान सिंह दिनांक 24.6.91 से 7.7.91 तक का अवकाश प्रार्थना पत्र देकर गया हो। प्रदर्श डवल्यू–2 प्रार्थना पत्र जहान सिंह ने नहीं दिया। प्रदर्श डब्ल्यू –3 जहान सिंह द्वारा दिया गया जवाब है, इसके संबंध में कोई जांच नहीं की गई। प्रदर्श डवल्यू 4 उन्हें नहीं मिला। प्रदर्श डवल्यू–5 व 6 रोग–आरोग्य प्रमाण पत्र उसे नहीं मिले और उनकी रिसीब्ड रजिस्टर में एन्ट्री नहीं है। घेवरिया से जहान सिंह की अनुपस्थिति की सूचना भेजी गई थी, जो प्रदर्श एम–7 व 8 है। जहान सिंह द्वारा उसके अवकाश प्रार्थना पत्र व रोग–आरोग्य प्रमाण पत्र भेजने की बात को गलत कहा है।

मैंने उभय पक्षों की बहस सुनी। पत्रावली का ध्यानपूर्वक अवध्ययन व अवलोकन किया गया।

प्रार्थी प्रतिनिधि ने बहस की है कि प्रकरण में श्रमिक की मृत्यु के पश्चात् नो डिस्पुट अवार्ड पारित नहीं किया जा सकता। विवाद के लम्बित रहने के दौरान श्रमिक की मृत्यु हो जाने पर श्रमिक के विरूद्ध आरोप सिद्ध नहीं माने जा सकते। विवाद से संबंधित श्रमिक की सेवामुक्ति स्थाई आदेशों के अनुसार निर्धारित अवधि में अधिक अवधि के लिये अनुपस्थित होने पर उसका नाम मस्टरॉल से काटकर की गई है, जो छंटनी की परिभाषा में आता है। श्रमिक की श्रमिक मुक्ति दुराचरण के आधार पर नहीं की गई। अतः नियोजक दुराचरण के आधार पर सेवामुक्ति का तर्क नहीं दे सकता। अप्रार्थी नियोजक की साक्ष्य से श्रमिक की Wilful Absent साबित नहीं होती है अतः उसके विरूद्ध आरोप सिद्ध नहीं माने जा सकते। प्रार्थी प्रतिनिधि द्वारा अपने तर्कों के समर्थन में निम्न न्यायिक दृष्टांत पेश किये गये हैं :–

1. 2005(3) डवल्यू.एल.सी. 616 (राज. उच्च न्यायालय) पप्पूराम बनाम लेबर कोर्ट व अन्य

2. 1995(70) एफ एल आर 244 (राज. उच्च न्यायालय) श्रीमति प्रेम कुमारी व अन्य बनाम सैन्ट्रल इण्डस्ट्रियल ट्रिब्युनल व अन्य।

3. 2011(2) आर एल डवल्यू 1152 (राज. उच्च न्यायालय) आरएसआरटीसी जयपुर बनाम सुखबीर सिंह व अन्य

4. 1982 आई एल एल जे 330 (माननीय सर्वोच्च न्यायालय) एल. रॉबर्ट डिसूजा बनाम साउथर्न रेलवे व अन्य।

5. 1993(2) आर एल आर 486 (राज. उच्च न्यायालय) नाथूराम सैनी बनाम हिन्दुस्तान कॉपर लि. व अन्य।

6. 1996 आई एल एल जे 152 (राज. उच्च न्यायालय) आरएसईबी बनाम लेबर कोर्ट व अन्य।

7. 1998 (2) एस एल आर 544 (माननीय सर्वोच्च न्यायालय) उपट्रॉन इण्डिया लि0 बनाम शम्मी भान व अन्य।

8. 2015 (145) एफ एल आर 425 (माननीय सर्वोच्च न्यायालय) अजय पाल सिंह बनाम हरियाणा वेयरहाउसिंग कॉरपोरेशन।

9. 2014(142) एफ एल आर 625 (माननीय सर्वोच्च न्यायालय) छैल सिंह बनाम एमजीबी ग्रमीण बैंक व अन्य।

10. 2012(3) एस सी सी 178 (माननीय सर्वोच्च न्यायालय) कृष्णकांत बी परमार बनाम यूनियन ऑफ इण्डिया व अन्य।

अप्रार्थी प्रतिनिधि ने बहस की है कि यदि श्रमिक की मृत्यु के पश्चात् उसके विधिक वारीसान रिकार्ड पर नहीं आते हैं तो श्रमिक कोई राहत पाने का अधिकारी नहीं रहता है। इस प्रकरण में भी प्रार्थी श्रमिक के विधिक वारीसान रिकार्ड पर नहीं है। अपने क्लेम को साबित करने हेतु प्रार्थी की ओर से कोई साक्ष्य नहीं है। अप्रार्थी नियोजक की साक्ष्य से प्रार्थी श्रमिक पर लगाये गये आरोप साबित होते हैं। अतः प्रार्थी का क्लेम खारिज किये जाने की प्रार्थना की है।

मैंने उभय पक्षों के तर्कों का मनन किया एवं प्रस्तुत न्यायिक दृष्टांतों का ससम्मानपूर्वक अध्ययन व अवलोकन किया गया।

पत्रावली के अवलोकन से स्पष्ट है कि उभय पक्षों के बीच यह निर्विवाद तथ्य है कि प्रार्थी श्रमिक श्री जहान सिंह विपक्षी संस्थान में मैकेनिकल इंचार्ज के पद पर कार्यरत रहा है। प्रार्थी प्रतिनिधि द्वारा एक आपत्ति अपने क्लेम एवं बहस में यह उठाई गई है कि आरोपी को कोई आरोप पत्र नहीं दिया गया और न ही कोई उसके विरूद्ध कोई जांच की गई। प्रार्थी श्रमिक जहान सिंह को ड्यूटी से बिना सूचना व अवकाश स्वीकृत कराये बिना अनुपस्थित रहने पर विपक्षी संस्थान द्वारा उसके स्थाई आदेश 11(ख) की उपधारा 7 के तहत गंभीर दुराचरण में आदेश दिनांक 12.7.91 द्वारा सेवापृथक किया गया है। यह सही है कि प्रार्थी श्रमिक को सेवापृथक करने से पूर्व उसके विरूद्ध कोई घरेलू जांच नहीं की गई लेकिन न्यायाधिकरण के आदेश दिनांक 7.9.1996 द्वारा न्यायाधिकरण के समक्ष प्रार्थी श्रमिक पर लगाये गये आरोप को सिद्ध करने बाबत् साक्ष्य पेश हुई है। जिससे स्पष्ट है कि प्रार्थी श्रमिक पर लगाये गये आरोप के संबंध में जांच न्यायाधिकरण के समक्ष हुई है जिसमें प्रार्थी की ओर से कोई गवाह पेश नहीं होने पर साक्ष्य प्रार्थी बंद की गई है तथा विपक्षी की ओर से साक्षी श्री जे.पी. जैन व श्री भूरालाल शर्मा परीक्षित हुये हैं। अतः प्रार्थी प्रतिनिधि की यह आपत्ति कि प्रार्थी के विरूद्ध आरोप के संबंध में कोई जांच नहीं हुई, स्वीकार किये जाने योग्य नहीं है।

प्रार्थी श्रमिक को सेवामुक्त करने से पूर्व विपक्षी संस्थान द्वारा उसको तीन दिवस के भीतर ड्यूटी पर उपस्थित होने बाबत् नोटिस प्रदर्श एम–2 क्रमांक 1095 दिनांक 26.6.91 भेजा गया है, जिसकी ए.डी. रसीद प्रदर्श एम–2/1 है। उक्त नोटिस अप्रार्थी को प्राप्त हुआ है। प्रार्थी श्रमिक द्वारा उक्त नोटिस का जवाब प्रदर्श डवल्यू–3 द्वारा विपक्षी संस्थान को भेजा गया है। जिसकी पुष्टि विपक्षी संस्थान की ओर से प्रस्तुत साक्षीगण श्री जे.पी. जैन व श्री भूरालाल शर्मा ने की है। अतः प्रार्थी श्रमिक का यह कथन स्वीकार किये जाने योग्य नहीं है कि प्रार्थी श्रमिक को सेवामुक्त करने से पूर्व कोई नोटिस नहीं दिया गया।

न्यायाधिकरण के समक्ष अवधारणीय बिन्दु यह है कि विपक्षी संस्थान द्वारा प्रार्थी श्रमिक को उसके स्थाई आदेशों के तहत सेवापृथक किया जाना उचित एवं वैद्य है अथवा नहीं?

इस संबंध में न्यायाधिकरण के समक्ष विपक्षी संस्थान की ओर से उसके स्थाई आदेश प्रदर्श एम–5 पेश किये गये हैं। जिसमें स्थाई आदेशों के क्रम संख्या 11(ख) के बिन्दु संख्या 7 के अनुसार बिना अवकाश स्वीकृत कराये गैर हाजिर रहना अथवा 10 दिन से अधिक लगातार गैर हाजिर रहना, को गंभीर दुराचरण माना है। प्रार्थी श्रमिक अपनी ड्यूटी से बिना सूचना व अवकाश स्वीकृत कराये अनुपस्थित रहा है, इस तथ्य की विपक्षी साक्षीगण ने पुष्टि की है। प्रार्थी श्रमिक द्वारा 24.6.91 से 7.7.91 तक का अवकाश प्रार्थना पत्र प्रदर्श डब्ल्यू–4 व प्रार्थी की बीमारी के संबंध में रोग–आरोग्य प्रमाण पत्र प्रदर्श डब्ल्यू–5 व 6 विपक्षी संस्थान को भेजे जाने से इंकार किया है। प्रार्थी श्रमिक की ओर से अपने बचाव में कोई साक्ष्य पेश नहीं की है जिससे यह प्रमाणित नहीं होता है कि प्रार्थी श्रमिक द्वारा अवकाश पर जाने से पूर्व अवकाश प्रार्थना पत्र दिया हो तथा उसके द्वारा उसकी बीमारी के संबंध में रोग–आरोग्य प्रमाण पत्र विपक्षीं संस्थान को भिजवाये गये हों। प्रार्थी द्वारा प्रदर्श डवल्यू–3 द्वारा विपक्षी के नोटिस का जवाब दिया गया है, उस जवाब में भी प्रार्थी द्वारा दिनांक 8.7.91 को विपक्षी संस्थान के समक्ष उपस्थित होने बाबत् अंकित किया गया है, लेकिन दिनांक 8.7.91 को भी प्रार्थी श्रमिक विपक्षी संस्थान के समक्ष उपस्थित नहीं हुआ है, जिसका उल्लेख उसके सेवापृथक आदेश में भी किया गया है।

विपक्षी द्वारा प्रार्थी श्रमिक को सेवामुक्त करने से पूर्व नियमानुसार नोटिस जारी किया गया है। उक्त नोटिस प्रार्थी को प्राप्त भी हुआ है, उसका जवाब भी प्रार्थी द्वारा विपक्षी को भेजा गया है। उसके बाद भी प्रार्थी श्रमिक ड्यूटी पर उपस्थित नहीं हुआ है। घेवरिया यूनिट से प्रार्थी की ड्यूटी से अनुपस्थित रहने की सूचना प्रदर्श एम–7 व 8 द्वारा विपक्षी को दी गई है। प्रार्थी श्रमिक द्वारा अपने क्लेम के समर्थन में कोई मौखिक साक्ष्य पेश नहीं की गई है। विपक्षी साक्षीगण की साक्ष्य से प्रार्थी का बिना सूचना के

व बिना अवकाश स्वीकृत कराये ड्यूटी से अनुपस्थित रहना प्रमाणित होता है। प्रार्थी के ड्यूटी पर उपस्थित नहीं होने पर प्रार्थी का कार्य करने का इच्छुक नहीं होना मानते हुये सेवा से बर्खास्त किया गया है, जो उचित एवं वैध है।

यह सही है कि प्रार्थी श्रमिक को सेवामुक्त करने से पूर्व विपक्षी संस्थान द्वारा उसे कोई नोटिस पे का भुगतान नहीं किया गया। चूंकि उपरोक्त विवेचनानुसार प्रार्थी श्रमिक का ड्यूटी से बिना सूचना व बिना अवकाश स्वीकृत कराये ड्यूटी से अनुपस्थित रहना सिद्ध होता है।

प्रार्थी प्रतिनिधि द्वारा एक आपत्ति यह की गई है कि श्रमिक की मृत्यु के पश्चात् प्रकरण में नो डिस्पुट अवार्ड पारित नहीं किया जा सकता। इस संबंध में न्यायाधिकरण द्वारा पत्रावली पर उपलब्ध मौखिक एवं दस्तावेजी साक्ष्य के आधार पर गुणावगुण पर अधिनिर्णय पारित किया जा रहा है। अतः प्रार्थी प्रतिनिधि की उक्त आपत्ति स्वीकार किये जाने योग्य नहीं है। प्रार्थी प्रतिनिधि द्वारा दूसरी आपत्ति यह की गई है कि श्रमिक की मृत्यु हो जाने पर उसके विरूद्ध आरोप सिद्ध नहीं माने जा सकते। इस संबंध में प्रार्थी की ओर से प्रस्तुत न्यायिक दृष्टांत 1995(70) एफ एल आर 244 (राज. उच्च न्यायालय) श्रीमति प्रेम कुमारी व अन्य बनाम सैन्ट्रल इण्डस्ट्रियल ट्रिब्युनल व अन्य एवं 2011(2) आर एल डवल्यू 1152 (राज. उच्च न्यायालय) आरएसआरटीसी जयपुर बनाम सुखबीर सिंह व अन्य में यह सिद्धांत प्रतिपादित किया गया है कि औद्योगिक न्यायाधिकरण द्वारा जहां यह निष्कर्ष दिया गया हो कि जांच उचित एवं शुद्ध नहीं है तथा कार्यवाही के लम्बित रहने के दौरान श्रमिक की मृत्यु हो गई हो तो उसके विरूद्ध साक्ष्य प्रस्तुत नहीं की जा सकती और इस आधार पर सेवामुक्ति अनुमोदन को अस्वीकार किए जाने के निर्णय को सही माना है। विचारणीय प्रकरण में प्रार्थी पर लगाये गये आरोप के संबंध में जांच न्यायाधिकरण के समक्ष हुई है। नियोजक की साक्ष्य पूर्ण होने पर प्रार्थी को साक्ष्य पेश करने का पूर्ण अवसर देते हुये साक्ष्य पेश नहीं करने पर साक्ष्य का हक बंद किया गया है। अतः प्रार्थी प्रतिनिधि द्वारा प्रस्तुत उक्त न्यायिक दृष्टांत हस्तगत प्रकरण में लागू नहीं होते हैं।

प्रार्थी प्रतिनिधि द्वारा एक आपत्ति यह की गई है कि अप्रार्थी नियोजक द्वारा प्रार्थी की सेवामुक्ति दुराचरण के आधार पर नहीं की गई तथा अप्रार्थी द्वारा अधिनियम की धारा 25 एफ की पालना नहीं की गई। इस संबंध में पत्रावली के अवलोकन एवं उपरोक्त विवेचनानुसार स्पष्ट है कि प्रार्थी श्रमिक को बिना सूचना व अवकाश स्वीकृत कराये ड्यूटी से अनुपस्थित होने के आरोप में न्यायाधिकरण के समक्ष जांच प्रस्तुत कर तथा जांच में अप्रार्थी नियोजक की साक्षीगण ने प्रार्थी श्रमिक पर लगाये गये आरोप की पुष्टि की है। नियोजक की साक्ष्य के खण्डन में प्रार्थी की ओर से पर्याप्त अवसर देने के बाद भी कोई साक्ष्य पेश नहीं हुई है। अतः अप्रार्थी नियोजक की साक्ष्य से प्रार्थी पर लगाये गये आरोप सिद्ध हुये हैं। नियोजक द्वारा प्रार्थी को संस्थान के स्थाई आदेशों के तहत दुराचरण के आरोप में सेवामुक्त किया गया है। यह सही है कि अप्रार्थी नियोजक द्वारा प्रार्थी की सेवामुक्ति से पूर्व नोटिस वेतन का भुगतान नहीं किया गया। चूँकि प्रार्थी द्वारा अपने क्लेम के समर्थन में कोई साक्ष्य पेश नहीं की है तथा अप्रार्थी साक्षीगण से प्रार्थी के विरूद्ध दुराचरण का आरोप साबित हुया है। ऐसी स्थिति में मेरे विनम्र मत में प्रार्थी श्रमिक को नोटिस पे का भुगतान दिलाया जाना उचित प्रतीत होता है।

प्रार्थी प्रतिनिधि की ओर से प्रस्तुत न्यायिक दृष्टांत हस्तगत प्रकरण के तथ्यों एवं परिस्थितियों से भिन्नता रखते हैं। अतः उनके द्वारा प्रस्तुत न्यायिक दृष्टांतों से प्रार्थी प्रतिनिधि को कोई लाभ नहीं मिलता है।

विचारणीय प्रकरण में विपक्षी द्वारा एक प्रार्थना पत्र पेश कर कथन किया है कि प्रार्थी श्रमिक जहान सिंह की मृत्यु हो चुकी है, प्रार्थी प्रतिनिधि ने भी उक्त प्रार्थना पत्र का कोई विरोध नहीं किया है तथा बहस के दौरान उनके द्वारा भी प्रार्थी की मृत्यु हो जाना जाहिर किया है। ऐसी स्थिति में प्रार्थी के विधिक वारीसान उसको देय नोटिस पे का भुगतान प्राप्त करने के अधिकारी होंगे। निष्कर्षतः प्रकरण में निम्न अधिनिर्णय पारित किया जाता है।

अधिनिर्णय

"चीफ एक्जीक्यूटिव वर्कस, उदयपुर मिनरल डवलपमेंट सिंडीकेंट, भीलवाड़ा के द्वारा श्रमिक श्री जहान सिंह को दिनांक 12.7.91 से सेवा से बर्खास्त किया जाना उचित एवं वैद्य है। प्रार्थी श्रमिक केवल नोटिस पे का भुगतान प्राप्त करने का अधिकारी है। प्रकरण में प्रार्थी श्रमिक की मृत्यु होने से उसके विधिक वारीसान उसको देय नोटिस पे का भुगतान प्राप्त करने के अधिकारी होंगे।"

अधिनिर्णय आज दिनांक 03.09.2019 को खुले न्यायालय में लिखाया जाकर सुनाया गया जो केन्द्र सरकार को प्रकाशनार्थ नियमानुसार भेजा जावे।

रूपा गुप्ता, न्यायाधीश

नई दिल्ली, 19 नवम्बर, 2019

का.आ. 2029.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स गेल (इण्डिया) लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 10/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.11.2019 को प्राप्त हुआ था।

[सं. एल-30011/37/2010-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 19th November, 2019

S.O. 2029.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 10/2011) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. GAIL (India) Limited and their workman, which was received by the Central Government on 15.11.2019.

[No. L-30011/37/2010-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 2, NEW DELHI

PRESENT : SMT. PRANITA MOHANTY, Presiding Officer, CGIT-cum-Labour Court-II, New Delhi

INDUSTRIAL DISPUTE CASE No. 10/2011

Date of Passing Award : 14th October, 2019

,

Shri V. K. Gupta, General Secretary,
GAIL Employees Association,
B-35 & 36, Sector-1,
NOIDA (UP) 201301. …Workman/Claimant

Versus

GAIL (India) Ltd., earlier known as
Gas Authority of India Ltd.,
Through its Director (HR),
16 Bhikaji Cama Place,
RK Puram,
New Delhi 110016. … Management/Respondent

Appearances :-

None	For the Workman
Shri Amit Kumar, A/R	For the Management

AWARD

This Award shall decide a reference which was made to this Tribunal by the appropriate Government vide letter No.L-30011/37/2010-IR(M) dated 20.1.2011 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short "the Act") for adjudication of an industrial dispute, terms of which are as under:

> 'Whether the demand of the GAIL's Employees Association to step up the wages of those employees who are senior but are getting lesser pay than their juniors, as a consequence of wage revision w.e.f. 1/1/1997 is just, fair and legal ? To what relief they are entitled ?'

2. Both parties were put to notice and the claimant Union through its General Secretary Shri VK Gupta filed statement of claim, with the averments that the claimant Union had raised an industrial dispute vide representation dated 9/1/2007 and follow up letters dated 30/7/2007 & 15/12/2008 against the Management over pay anomaly arising out of implementation of pay revision w.e.f. 1/1/1997, which resulted into more payment to juniors upon promotion and loss to the seniors. Conciliation proceedings were held but resulted into failure since the Management vide its reply dated 23/3/2009 denied the claim of the claimant Union and did not resolve the pay anomalies. The claimant Union has given details in para 9 of the claim petition to allege that there are numerous cases lying pending for settlement and pay protection replicating the anomaly of pay fixation. Claimant Union has prayed for passing an award to step up the basic pay of senior employees upto the basic pay of t heir juniors in order to remove anomaly.

3. Management resisted the claim of the Claimant Union, by filing written reply and took preliminary objections that the present claim amounts to challenging the Tripartite long term settlement dated 17/11/2000 entered into between the Management and recognized union during the course of Conciliation proceedings. The wage revision of workmen of GAIL is done through a process of collective bargaining/negotiation & Tripartite Long Term Settlement is signed

between Management and Trade Union under Section 2(p) & 18 of the Act. It is alleged that there was no pay anomaly as on 1/1/1997 i.e. the date of pay revision of workmen of GAIL. The issue is a consequence of wage revision w.e.f. 1/1/1997, whereas employees who were promoted in 1996 (pre revised pay scale) drawing lesser pay than those who got promoted in 1997 (revised pay scale) and therefore post implementation of wage revision w.e.f. 1/1/1997 and consequent upon promotion of an employee after 1/1/1997 it was inevitable that monetary benefit would be more compared to those promoted in pre revised pay structure. The same can not be treated as pay anomaly as the pay difference has occurred after the date of pay revision i.e. 1/1/1997 and any pay difference between senior and junior at later date on any account can not be treated as pay anomaly. It has been alleged that as agreed to by the claimant Union and the Management, a Three- Member Committee was constituted to deal with the pay anomaly cases that had to give its recommendation latest by 15/12/2006 and thereafter the claimant appeared before the Committee on 15/12/2006 and put forth their views on the issue and requested the Committee to dispose of the cases on 20/12/2006. The Management also constituted a cross functional Committee of Executives for exploring any matter which was possibly left out by the pay anomaly committee in the year 2001. The cross Functional Committee examined the entire issue and found that there was no merit in the claim as there was no pay anomaly as on 1/1/1997 i.e. the date of pay revision. Prayer has been made for dismissal of the claim petition.

4- The claimant Union filed rejoinder/replication, reiterating its own case and denied the allegations made in the written statement.

5- Perusal of the record shows that the claimant Union though tendered affidavit of erstwhile General Secretary Shri V.K.Gupta as WW1/A but he did not enter the witness box after he was no more General Secretary of Claimant Union. Thereafter affidavit of newly elected General Secretary Shri Bir Singh was also filed on record but for the reasons best known to him, he did not enter the witness box for tendering his affidavit and cross examination, despite the fact that number of opportunities were granted to the claimant Union and ultimately, this Tribunal was left with no option but to close the evidence of claimant Union vide order dated 18/10/2016. Perusal of the record also shows that Shri Dinesh, witness of the Management tendered his evidence by way of affidavit but neither the claimant nor any authorised representative of the claimant Union appeared to cross examine the MW Shri Dinesh despite several opportunities granted. As such, right to cross examine MW Shri Dinesh by the claimant was closed vide order dated 2/8/2018.

6- Onus was upon the claimant Union to prove that there was pay anomaly or that the juniors in the establishment of Management were drawing more pay than those their seniors, due to revision of pay by the Management. It is a matter of record that the claimant did not appear before the Tribunal from 01/08/2017 onwards despite the fact that matter was adjourned time and again and ultimately this Tribunal was constrained to reserve the matter for passing the award.

7- In view of the fact that the claimant Union has not led any evidence in support of its case, this Tribunal is constrained to pass No Dispute Award in the matter. Since the matter has not been decided on merits, there will be no bar for the claimant to file afresh claim petition in accordance with law for adjudication of the controversy in issue or to seek any other relief to which the claimant Union is otherwise entitled to. Award is passed accordingly.

Let a copy of this Award be sent for publication as required under Section 17 of the Act.

Dictated & corrected by me.

PRANITA MOHANTY, Presiding Officer

14th October, 2019

नई दिल्ली, 19 नवम्बर, 2019

का.आ. 2030.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स स्टील अथॉरिटी ऑफ इण्डिया लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 129/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.11.2019 को प्राप्त हुआ था।

[सं. एल-26011/24/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 19th November, 2019

S.O. 2030.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 129/2015) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the

management of M/s. Steel Authority of India Limited and other and their workman, which was received by the Central Government on 15.11.2019.

[No. L-26011/24/2015-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 2, NEW DELHI

PRESENT : SMT. PRANITA MOHANTY, Presiding Officer, CGIT-cum-Labour Court-II, New Delhi

INDUSTRIAL DISPUTE CASE No. 129/2015

Date of Passing Award : 14th October, 2019

The workmen (35 Nos. as mentioned in Annexure-A)
As Represented by Delhi State General Workers Congress (Regd.)
V/5-101, Sector 5 Rohini, Delhi 110085,
(now name changed to Delhi State General Workers Union …Workmen/Claimants

Versus

1. The Management of Steel Authority of India Limited,
   Ispat Bhawan, Lodhi Road,
   New Delhi.

2. M/s. Flying Fox Security Services,
   Steel Authority of India Limited,
   Ispat Bhawan, Lodhi Road,
   New Delhi.

3. M/s. At Home Caterers,
   G-1, Magnum Commercial Complex,
   New Delhi 110015. … Management/Employer

Appearances :-

None For the Workmen

Ms. Jaya Tomar, A/R For the Management

AWARD

This Award shall decide a reference which was made to this Tribunal by the appropriate Government vide letter No.L-26011/24/2015-IR(M) dated 25.8.2015 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short "the Act") for adjudication of an industrial dispute, terms of which are as under:

> 'Whether the action of the management of Steel Authority of India Lt.d, New Delhi in not paying special allowance @ Rupees one thousand only per month with effect from 1.10.2009 to the thirty five contract workmen as per the list enclosed, is legal and justified ? If not, what relief are they entitled to ?'

2. Both parties were put to notice and the claimants/ workmen filed statement of claim through Shri Jagdish Prasad, President of the Union, with the averments that the workmen Gajender Singh and others (whose names find mention in Annexure-A) have been serving the Management of Steel Authority of India (in short "the SAIL") as security guards, safai karamcharis for the last 25 to 30 years to the entire satisfaction of the Management. With a view to evade the liabilities of the workmen, the Management has adopted a practice of showing the workmen engaged through the contractors/agencies against the permanent & perennial nature of work. The contractors so engaged by the Management are nothing but camouflage to conceal the real relationship of employer & employees between the Management and the workmen. It is averred that the Ministry of Steel, headed by Shri Ram Vilas Paswan, the then Minister of Steel had declared that all the workmen employed in the establishment of SAIL through contractors/ agencies shall be paid an increase in wages of Rs.1000/- per month w.;e.f. 1/10/2009. The Management has implemented the said decision in its

various branches in respect of similarly placed workmen/contractor labours and have paid the said hike of Rs.1000/-, termed as "Welfare Allowance", in addition to their wages/salary w.e.f. 1/10/2009 but the workmen concerned who have been working in the CMO office & shown to have been engaged through contractor/agency have not been paid the said benefit till date, though the workmen connected to the proceedings are also entitled to such benefit/welfare allowance of Rs.1000/- per month w.e.f.1/10/2009. It is pleaded that the action of the Management in not paying the hike/welfare allowance of Rs.1000/- per month to the workmen herein is illegal, arbitrary & unjustified, as the similarly placed workmen/contract labours in other offices & branches of the Management have been paid the same w.e.f.1/10/2009. The workmen through the Union sent a letter/demand notice dated 23/10/2010 to the Management, followed by reminder dated 9/2/2011 but to no response. Thereafter they approached the Conciliation Officer but to no avail. Prayer has been made to answer the reference in favour of the workmen, thereby directing the Management to pay hike/welfare allowance of Rs.1000/- per month to the workmen w.e.f. 1/10/2009 and to continue to the pay the same in future every month.

3. Management No.1 resisted the claim of the workman, by filing written statement, stating that the claim is not maintainable as the claimants were not engaged by the Management No.1 but by the agency viz. Management No.2 & 3. As such, there is no direct relationship of employer-employee between the Management No.1 and the workmen. While denying the allegations of the claimants/workmen, it has been stated that the claimants may have been working under the agencies like Management No.2 and 3 but not under the direct control & supervision of Management No.1. As such, the claimants have no locus to file the statement of claim as against Management No.1. Prayer has been made for dismissal of claim petition.

5- None appeared on behalf of Management No.2 and 3 since very beginning. On the pleadings of the parties, following issues were framed by my learned Predecessor on 11/4/2017 :-

1) Whether the action of the management of Steel Authority of India Lt.d, New Delhi in not paying special allowance @ Rupees one thousand only per month with effect from 1.10.2009 to the thirty five contract workmen as per the list enclosed, is legal and justified ? If so, its effect

2) If not, what relief are they entitled to ?

6- Perusal of the record shows that despite number of opportunities granted to the workmen/claimants to adduce evidence so as to prove their case regarding entitlement of special allowance @ Rs.1000/- per month w.e.f. 1/10/2009, they did not lead any evidence and ultimately this Tribunal was left with no option but to close their evidence vide order dated 14/12/2018. On the contrary, the management No.1 has examined Shri Sushvan Sengupta, Deputy General Manager (P&A) as MW1 who filed his evidence by way of affidavit Ex.MW1/A and relied on the documents Ex.MW1/1 and Mark-A. Affidavit of MW1 is in conformity with the averments made in the written statement. Mark-A is the copy of the award of contract by Management No.1 in favour of Management No.3 herein for catering service for two years w.e.f. 1/9/2012 to 31/8/2014, whereas document Ex.MW1/1 is the copy of the GPA dated 1/7/2008 executed by the Management of SAIL through its Executive Director D.Kobi, in favour of Shri Sushovan Sengupta to execute & sign contracts/agreements etc. on behalf of SAIL.

7- Onus was upon the claimants/workmen to prove that there existed relationship of employees and employer between them and Management No.1 herein and further that they were entitled to get hike/special allowance @ Rs.1000/- per month w.e.f. 1/10/2009. It is a matter of record that the claimants/workmen did not cause appearance before the Tribunal from 26/3/2018 onwards despite the fact that matter was adjourned time and again. It appeared that the workmen/claimants were/are not interested to prosecute the case. Ultimately this Tribunal was constrained to close evidence of the workmen vide order dated 14/12/2018. Testimony of MW1 that the claimants were engaged by the agencies viz. Management No.2 and 3 and that Management No.1 has no role in the appointment/engagement of the workmen connected to the proceedings, has gone unchallenged and unssaled.

7- In view of the fact that the claimants have not led any evidence in support of their case, this Tribunal is constrained to pass No Dispute Award in the matter. Award is passed accordingly.

Let a copy of this Award be sent for publication as required under Section 17 of the Act.

Dictated & corrected by me.

PRANITA MOHANTY, Presiding Officer

14th October, 2019

नई दिल्ली, 19 नवम्बर, 2019

का.आ. 2031.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स इण्डियन ऑयल कार्पोरेशन लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 20/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.11.2019 को प्राप्त हुआ था।

[सं. एल-30011/41/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 19th November, 2019

S.O. 2031.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 20/2016) of the Central Government Industrial Tribunal/Labour Court, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Indian Oil Corporation Limited and other and their workman, which was received by the Central Government on 15.11.2019.

[No. L-30011/41/2015-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 20 of 2016

Parties: Employers in relation to the management of Haldia Refinery

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:
On behalf of the Management : Mr. Mr. N.K. Mehta, learned counsel with Mr. S.K Sharma for Indian Oil Corpn., Haldia Refinery.

On behalf of the Workmen : None

State: West Bengal. Industry: Petroleum

Dated: 7th November, 2019.

AWARD

By Order No.L-30011/41/2015-IR(M) dated 12.02.2016 and addendum of even number dated 11.06.2018 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

> "*Whether the action of the management of M/s. Bharat Trading Corporation, contractor of IOCL, Haldia Refinery, in denying the nine points charter of demand raised by the union is legal and/or justified? If not, what relief theworkmen are entitled?"*

2. When the case was taken up for hearing today, none appeared for the union, though learned counsel for Indian Oil Corporation Ltd., Haldia Refinery was present. It transpires from record that this reference is pending in this Tribunal since 26.02.2016 and the union never entered appearance and filed statement of claim, nor took any step to proceed with the matter inspite of sufficient opportunity. Learned counsel for the management submitted that since the union has not filed statement of claim, managements have nothing to answer and prayed for disposal of the case by passing an Award.

3. On consideration of the facts and circumstances of the case, it appears that the union has no grievance at present in respect of nine points charter of demand, as mentioned in the order of reference. Therefore, there exists no dispute for adjudication.

4. Therefore, the reference is disposed of accordingly.

Justice RAVINDRA NATH MISHRA, Presiding Officer

Dated, Kolkata,

The 7th November, 2019

नई दिल्ली, 20 नवम्बर, 2019

का.आ. 2032.—राष्ट्रपति, न्यायाधीश (सेवानिवृत्त) रविन्द्र नाथ कक्कड़ को दिनांक 12.11.2019 (अपराह्न) से 65 वर्ष की आयु अर्थात 04.12.2021 तक अथवा अगले आदेशों तक, जो भी पहले हो, केन्द्रीय सरकार औद्योगिक अधिकरण सह श्रम न्यायालय सं. 1/राष्ट्रीय औद्योगिक अधिकरण, मुंबई के पीठासीन अधिकारी के रूप में नियुक्त करते हैं।

[सं. अ-19011/03/2019-सीएलएस-II]

सतीश चन्दर, अवर सचिव

New Delhi, the 20th November, 2019

S.O. 2032.—The President is pleased to appoint Justice(Retd.) Ravindra Nath Kakkar as Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court No.1/National Industrial Tribunal, Mumbai with effect from 12.11.2019(A/N) and till he attains the age of 65 years i.e. upto 04.12.2021 or until further orders, whichever is earlier.

[No. A-19011/03/2019-CLS-II]

SATISH CHANDER, Under Secy.

नई दिल्ली, 20 नवम्बर, 2019

का.आ. 2033.–औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 186/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.11.2019 को प्राप्त हुआ था।

[सं. एल–22012/482/1994–आईआर (सीएम-II)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 20th November, 2019

S.O. 2033.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 186/1995) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of M/s S.E.C.L and their workmen, received by the Central Government on 19.11.2019.

[No. L-22012/482/1994-IR(CM-II)]

S. C. RAY, Section Officer

ANNEXURE

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, JABALPUR

NO. CGIT/LC/R/186/95

Present: P.K.Srivastava H.J.S.(Retd)

Shri M.L.Pandey
Secretary.
M.P.Koyla Mazdoor Sabha
South Jhagarakhand Colliery
District Surguja …Workmen/Union

Versus

1. The General Manager
Jamuna & Kotma
Areas of SECL
Jamuna Colliery
District Shahdol (M.P.) … Management

AWARD

(passed on this day of 21st October, 2019)

1. As per letter No dated 30-10-96 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.22012/482/94-IR(C-II) .The dispute under reference relates to:

> **"Whether the action of the General Manager, Jamuna & Kotma Areas of SECL in not regularizing 112 workers (list enclosed) who performed various duties in Harad Incline colliery during the years 1990 and 1992 is legal and justified? If not so what relief the workmen are entitled?"**

2. Further an corrigendum was issued by the appropriate Government impleading Sadhuram Gupta, Contractor at Harad inclines also a party to the reference.

3. A corrigendum from the Government of India, Ministry of Labour No.L-22012/482/94-IR(C-II) was issued which is as follows:-

> **"In the office order of even number dated 30-10-97 referring the industrial dispute between the employers in relation to the management of M/s S.E.C.L., Jamuna & KOtma Area and their workmen after serial Numae 2 under the heading copy forwarded for necessary action, the following may be added:-**
>
> **Sh. Sadhu Ram Gupta, Contractor at Harad Incline.**

4. After registering the case on the basis of reference, notices were sent to the parties.

5. According to the statement of claim put up by the union on behalf of the workmen Bihari and 111other as per list enclosed with the notification were working in Harad Incline of Yamuna Kotma area of the employer company. The employer company is a Government of India undertaking. These workmen were engaged by the Management for mining jobs of prohibited nature. Union raised a dispute before the Assistant Labour Commissioner Central for regularization of these workmen under company rules and other benefits. Conciliation proceedings ended in failure and a failure report was sent to ministry but Ministry refused to refer the dispute to the tribunal vide letter No.L-22012/482/94-IR(C II) dated 5-12-1994 on the plea that the workmen in question were engaged by contractor and not by Management hence there was no industrial dispute between management or SECL and these workmen. Acc0ording to applicant /workmen Union filed a writ petition before High Court of M.P. which was Writ petition No.609/1995. Hon'ble High Court directed vide its order dated 31-8-1995 to make a reference of the industrial dispute and it is in compliance of the said order the present reference was made by the appropriate government. According to the workmen Union the services of the workmen in question were utilized for mining job, they were deployed in mines. The management was bound to prepare documents as required under the provisions of mines Act which are as follows:-

1. Form B register in respect of each workmen under Section 48 of Mines Act.
2. Attendance register in form No.C, Dor E depending on nature of deployment as is mentioned under Section 48(4) of the Mines Act.
3. Attendance should be marked by Statutory personnel and not by contractor as directed by Director of Mines safety vide circular No.537-646/Jabalpur dated 1-2-1985.
4. The vocational training be given to the workmen as per Rules 6 of Mines Vocational training Rules.

6. Also, it was alleged that these workmen worked from 1990 to 1992, engaged in work of perennial nature in violation of NCWA Clause 11.5.0 and 11.5.1, they had completed more than 190/240 days in attendance in every year including the year preceding the disengagement, they worked in driving of stone drifts and misc. stone cutting underground as well overburden renewal and earth cutting which is prohibited to be taken by contractor vide Govt. of India notification dated 21-6-1988, hence engaged in work of prohibited nature which was not to be taken through a contractor, In fact the workmen were deployed by management but for the purposes, of paying less wages, the Management engaged a contractor who has always been smoke screen and camouflage in the eyes of law. The real employer is the Management of the SECL and not the ghost intermediary contractor, hence there is a an employer- employee relationship between the

workmen and Management of the company..Accordingly, it has been prayed that the reference be answered holding the action of Management in not regularizing the services of 112 workmen as per the list annexed with the notification who performed various duties in Harad Incline during the year 1990 -1992 illegal and unjustified and further declare them entitled to all the consequential benefits, treating them in continuous engagement from the date of their disengagement.

7. The Management company SECL has in its statement of defense pleaded that these applicant/workmen were never engaged by the management of the company they were not engaged for work of prohibited nature or perennial nature. The identity of the 112 workmen is also not established. The case of the workmen that they worked for more than 190-240 days in any year under the direct control and supervision of the management company was also denied. It was also denied that the work of driving of stone drifts and misc. stone cutting underground was taken from the applicant/workmen continuously during the relevant period. It was further pleaded by the Management that it was the practice that for short work, short term contracts were given, the period of which does not exceed six months.The contractors were left free to employ workers of their choice and the Management of the company did not not have any hold or control over them except that to see that their wages are paid by contractors in presence of representative of management as required under Contract Labor (Regulation & Abolition) Act 1970, hereinafter referred to by word 'CLRA Act'. The Management has further denied that the requirements under Contract Labor Regulation& Abolition Act 1970 have not been complied with and have pleaded that the work was never supervised by the officials of the company except that the execution of the overall work was used to be supervised by the official of the company. Vocational training was given to workers as it was required under Rules. Accordingly, it has been pleaded that since the workmen were the employees of the contractor they could have best claimed relief from contractor who is a necessary party to the reference, accordingly, the management has prayed that the reference be answered against the workmen.

8. The contractor has also filed his reply/defense wherein he has pleaded that the three work orders issued to him by the management of the company which were order No.2004 dated 20-6-1993 order No.205 dated Jan.7.1993 and the third order were of the same and in continuity rather the work started on 20-9-1991 and completed till 31-7-1993 i.e. continued for a period of more than 2 years which is corroborated by the copy of bills filed by management as ananexure-5,6 and 7 and chart Annexure-8. Also, it was submitted that the said workers worked almost every day, the contractor used to mark their attendance for the purpose of payment and the work supervisor also used to maintain attendance record and certified copy of payment sheet was submitted to Management for disbursement of wages. As the contractor was made party after six years of reference, he was not bound to keep all such records as per rules beyond three years. The main contention of the contractor is that no record is left with him as he was made party after six years of reference and he was only required to maintain the record for three years as per rules.

1. The workmen union has filed rejoinder wherein they have denied the pleadings of Management.

2. In evidence, the Union has filed photocopy of notification of Government of India dated 21-6-88 Exhibit W-1. Rest of the documents and some original documents also which have not been proved hence cannot be read in evidence.

3. The workmen/union has filed affidavits of workmen Deepchand Mahara, Ramkhilawan Sharma, Dayaram yadav, Jagdish Baiga, Bhagwean, Ramlakhan, Minhaz, Vijay Bhadur Singh Kamal Agarwal, Teerath Pratap Singh ,Manoj Kumar TrisholioMansingh, Ramsingh Gond, Newal Singh Gond, Behalsingh, Chhavilal, Gangasingh, Bhupat Singh Jeevanlal, BabuwaBaiga, BechuBaiga , BhikariPaav Ramkumar and many other witnesses, out of which only witnesses Bihari, Dayaram, Manoj Kumar Trisholiya, Vijay bahadur Singh Minhaz, Bhagwandeen, Jagdish Baiga,Ramlakhan and Ramkhilavan have been produced for cross-examination by Management. Rest of the witnesses were not produced for cross-examination, hence only the statement of workmen witnesses who have been produced for cross-examination only will be read in evidence.

4. Management has examined on oath two witnesses Uditya Singh, Sr.Manager Mining and Panchamlal Singh, Deputy Manager Survey on oath . They have been cross-examined by workmen/union. The Management has further proved the Exhibit documents following Exhibit:-

    1. Exhibit M-1 (copy of list of distribution of work-10 pages)

    2. Exhibit M-1 (A)(Work Order No.1121 dated 9.9.91)

    3. Exhibit M-2 (letter/workorder dated 20-6-1993)

    4. Exhibit M-3 (letter/work order dated 7.1.1993)

    5. Exhibit M-4 (description of work)

    6. Exhibit M-5, M-6,M-7 (copy of wage sheet)

    7. Exhibit M-8 (photocopy of license of contractor)

8. Exhibit M-9 (Form B of Contract Labor-42 pages)

9. Exhibit M-10 (VTC Certificate of 43 persons)

10. Exhibit M-11 (Attendance register11

11. Exhibit M-12 (Lamp issued register)

12. Exhibit M-13/1 Exhibit M-13/3 (three tender notices drivage of Incline).

13. Exhibit M-14 (photocopy of contract agreement)

14. Exhibit M-15 & M-16 (Map and project report of mine).

9. I have heard arguments of Advocate Shri R.C.Shrivastava, learned Counsel for Workmen and Shri A.K.Shashi, learned Counsel for Management. Parties have filed memorandum of arguments which are taken on record. I have gone through the records, written submissions made by parties and also the case laws relied to by the parties.

10. From the perusal of the record and in the light of rival arguments, following issues, arise in the present case.

"1. Whether the workmen were engaged in work of prohibited category.

2. Whether the alleged contracts where sham and bogus, rather a camouflage to deprive theworkmen of their benefits.

3. Whether the disengagement of workmen is justified in law and fact.

4. Whether the workmen are entitled to any benefits."

11. <u>Issue No. 1-</u>

According to the respective claims of the parties in this case, it is alleged from the side of the Workmen that the said contract is of prohibited category on two grounds **Firstly,** because it was work of perennial/regular nature and **Secondly,** it was prohibited by notification of Government of India dated 21-1-88.

Section 1 Sub-Section (5) of the'CLRA Act'is relevant here which is being reproduced as follows:-

"(a) It shall not apply to establishments in which work only of an intermittent or casual nature is performed. (b) If a question arises whether work performed in an establishment is of an intermittent or casual nature, the appropriate Government shall decide that question after consultation with the Central Board or, as the case may be, a State Board, and its decision shall be final.

Explanation.-- For the purpose of this sub-section, work performed in an establishment shall not be deemed to be of an intermittent nature—

(i) if it was performed for more than one hundred and twenty days in the preceding twelve months, or

(ii) **(ii) if it is of a seasonal character and is performed for more than six months in a year."**

12. Learned Counsel for the Workmen/Union has further referred to Clause **11.5.1 of the agreement of NCWA 4/5** which reads as follows:-

"Industries shall not apply labours through contractor or engage contractor's labour on jobs of permanent and perennial nature."

13. Learned Counsel further refers to Notification of Government of India dated 21-6-1988 on record which prohibits contract labor in following jobs :-

SCHEDULE

1. Raising or raising-cum-selling of coal;

2. Coal loading and unloading:

3. Over burden removal and earth cutting:

4. Soft coke manufacturing

5. Driving of stone drifts and miscellaneous stone cutting underground:

Provided that his notification shall not apply to the following categories:-

(a) Quarries in the North-East Coal Field which can only be worked for a few months every year due to heavy rainfall in the area:

(b) Quarries located by the side of the reiven in Pency valley and similar other patch deposits which can only be worked when the level of river has gone down and during non-rainy seasons;

(c) Loading coal when there is mechanical failure, failure of power or irregular supply of wagon by the railway; and

(d) Cutting tone drifts/faults which cannot be detected in advance and are of short duration, say upto six months.

14. It is in the argument of learned Counsel of Workmen that since there was in prohibition of NCWA and CLRA Act, as mentioned above, hence the work for which the so called contractor is alleged to have been engaged of prohibited nature which could not be done through contractor. On the other hand, learned counsel for Management has submitted that **firstly**, the work is not of perennial nature as mentioned in Section -1 Sub-Section 5 of the CLRA Act and **secondly,**the evidence on record as well documents regarding the issuing of tender and work agreement as well as work order show that the said got executed through the contractor wasof prohibitory category as mentioned in the notification dated 21-6-1988. The Management witness Uditya Singh, Senior Manager Mining has stated in his affidavit filed as examination-in-chief that for the purpose of starting of new mine, certain work are required to be done which are temporary/intermittent and not prohibited under the provision of CLRA Act, were got done by contractor after the tender process. He further stated that the contract terminated on the completion of the work and also that the work of act of excavation in rock sale etc. for incline shaft using pickaxe cheese chiseling, neet brazing of excavation surface removal of raw shale etc. Excavated serviceable and un serviceable within a lead of 50 M including loading in tops and unloading the same in surface as per instructions and direction of the Project Authority for which the contract was awarded vide three work orders mentioned as follows:-

A. Work order No.1888 dated 19-12-1991.

B. Work Order No.204 dated 20-6-1993.

C. Work Order No.2053 dated 7-1-1993.

He has proved these three work orders as Exhibit M-1, M-2 and M-3 and has stated that before this the Management had invited tenders which was finalized in the name of the contractor and separate agreements were entered into between the Management and Contractor. These witnesses further states that the order against work order no.1888 was completed on May-15-1992 within a period of six months, he has proved. The copy of measurement book relating to this which shows the quantum of work. Similarly, work order No.204 was executed from 1-2-1993 to 10-5-1993, copy of measurement book in this respect shows dis-engagement of 37 workers. According to this statement, the work against the third work order No.2053 dated 7-1-1993 got completed from 12.9.1992 to 31.1.1993 (copy of measurement book with respect to this work order is also proved). It is worth noticing here that all three measurement book has been admitted by the Workmen Union they have been marked M-4, M-5 and M-6. One other document filed by Management admitted by workmen/union requires to be referred here is the excavation map prepared before excavation which is prepared by CMPDI. This map is the blue print regarding the area which is to be excavated for mining. This document is M-15 which shows that the proposed area where the mining activity is to be conducted, consists of two inter connected adjacent inclines which are one unit at one site. Since the work was done at one work site, is not disputed between the parties and it is proved from the CMPDI map and statement of witnesses from both the sides, and also, it is proved that the work continued for two years i.e. From Dec.1991 to 31-1-1993though were separate tenders were issued for this work which was to be done at one site and were work agreements were done also were separate work orders were issued as mentioned above from this description of evidence , this fact that firstly the work was done at one site and not at different working site and secondly, all the work orders were for only work which continued in the three work orders**. Hence,the fact that these three work orders were issued for the same works in continuity and also that the whole work took two years to be completed is held proved.** Therefore, in the light of the this finding the case of Management that the said order was of casual /intermittent nature to be completed within six months, hence it is not a work of permanent or perennial nature and is liable to be rejected**. On the basis of the evidence on record, the fact that the work got executed by Management through alleged contractor was of a permanent/perennial nature for which the contract labor is prohibited as per Section 1 of sub-section(5) of CLRA Act1970 is held proved.**

15. As regards, **the second ground taken by workmen that the work was of prohibited category in the light of notification of 1988,** which has been referred to earlier in this Judgment. According to the learned counsel for the workmen the work allotted was driving of stone drifts and miscellaneous stone cutting under ground hence it was a prohibited job for which Notification under Section 10(1) of CLRA Act was issued in 1988. On the other hand , it has been submitted by learned counsel for management that in fact the work was allotted for drivage of stone refits and

miscellaneous stone cutting under ground was taken from the applicants. Learned counsel has referred to the Proviso-D of the said notification of 1988 wherein cutting stone rifts/faults which cannot be detected in advance and are of short duration say upto six months is exempted from from prohibition and has submitted that unforeseen stone layer coming in the way while executing the work of drivage of inclined shaft are to be of short duration hence cannot be covered under the prohibition as prohibited. This argument has been rebutted by learned counsel for workmen/union with an argument that evidence on record in form of statement of witnesses and documents and as proved that in the garb of drive of incline shaft in the so called agreement work of driving of stone drifts and misc. stone underground cutting was taken from the workmen. Learned counsel has referred to the statement of the workmen witness in this respect firstly. The workmen witness have stated that :-

"----"पैरा-1: यह कि मैंने हरद खदान के मुहाड़ा खुदाई में सितम्बर 1991 से अगस्त 1993 तक काम किया है। यह काम तीनों पाली (शिफ्ट) में चलता था। दोनों मुहाड़ा मिलकर प्रत्येक पाली में 40-45 मजदूर काम करते थे।

पैरा-2: यह कि हमको प्रबंधकों द्वारा नियोजित किया गया था।

पैरा-3: यह कि, हम लोग ड्रिल मशीन चलाने, पत्थर काटने, गाड़ी भरने, टोपी (डिटोनेटर) -बारूद ले जाने तथा ठसानी करने इत्यादि काम किया करते थे।

पैरा- 4: यह कि, हमारे कार्य का निरीक्षण सुपरवाईजर, प्रबंधक, अण्डर मैनेजर, ओव्हरमैन, माइनिंग सरदार द्वारा किया जाता था

16. In his cross-examination the workmen witness Bhagwandeen has stated that he was given the work of opening the Incline. He further admits that the works which he has mentioned in para-3 of his affidavit(mentioned earlier) relates to opening of the Incline. The Statement of other workmen witnesses is also on same lines. There is on record the statement of two management witnesses in this respect. Management witness Uditya Singh, Senior Manager has stated that the work which was to be executed was drivage of Incline Shaft for Harad Incline, excavation of rock/sale etc. for Incline Shaft using pickaxe, chiseling , neet dressing of excavation surface removal of rock/shale excavation serviceable and non-serviceable within a lead of 50M including loading and unloading the same in surface as per instructions and directions of Project Authority. He further stated that width and height of drivage was 4.5m to 2.5m, hence it would not be imagined that more than 42 persons were working at one drivage nor more than 14 persons could have worked in each shift. Also that drivage of stone drifting is not mining of stone but arrangements made for mining of coal by removing obstacles, cutting by stone. In this cross-examination on this points, he admits that for moving these drifts blasts are also done. The projectreport proved is M-16 is very relevant in this respect.

17. From the statement as well as Project Report M-16 it is established that possibility of cutting stone drift/blasts was not ruled out in the project report and by the management. Hence, the arguments of learned counsel for management that it could not be detected in advance, fails in the light of above discussion**. It is held proved with the work continued for two years i.e. more than six months, hence on the basis of these proved facts Proviso-D of the notification could not apply to the case in hand on the basis of the evidence as discussed above, it is held proved that the workmen were engaged in driving of stone drifts and misc. stone cutting under ground while taking the work of drivage of Incline which was known to the management in advance and they were not of a short duration of six months rather they continued up to two years.**

Accordingly the claim of the workmen union that the work done was prohibited vide notification of July-21-1998 and was classified in a prohibited category which could not be taken by contractlabor as proved under Section 10(1) of CLRA Act.

18. On **the basis of the finding recorded above holding that firstly, the work was of perennial nature for which employment of contractor was prohibited under Section 11.5.1 of NCWA- IV/V and secondly, the work was of prohibited nature as provided under Clause 5 of Schedule of prohibited works in the prohibition notification June-21-88 ,Issue No.1is answered in favor of workmen**.

19. Issue No. 2-

Before entering into examination of evidence on this issue produced from both the sides, it is proper to refer the case laws referred to by both the side learned counsel in this respect is as under-

20. The learned Counsel for workmen/Union has referred to case law **Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and others, (1978)4 Supreme Court Cases 257**. The relevant portion is reproduced below: -

"***Labor and Industrial Law – Industrial Disputes Act 1947 – Section 2(s) – Employer and employee relationship – Workmen employed by independent contractor to work in employer's factory – Whether "workmen" – Tests for determining***

The petitioner is a factory owner manufacturing ropes. A number of workmen were engaged to make ropes but they were hired by contractors who had executed agreements with the petitioner to get such work done. When 29 of those workmen were denied employment, an industrial dispute was referred by the State Government and the award was attacked on the ground that the workmen were not workmen of the petitioner but only of the contractor. The High Court rejected the contention. Dismissing the appeal, the Supreme Court.

Held:

The facts found are that the work done by the workmen was an integral part of the industry concerned, that the raw material was supplied by the management, that the factory premises belonged to the management, that the equipment used also belonged to the management, and that the finished product was taken by the management for its own trade. The workmen were broadly under the control of the management and defective articles were directed to be rectified by the management. This concatenation of circumstances is conclusive that the workmen were the workmen of the petitioner. (Para-2)

The true test is where a worker or group of workers labor to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill and continued employment. If he, for any reason, chokes off, the worker is virtually laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contrctu is of no consequence, when, on lifting the veil or looking at the conspectus of factors governing employment, the naked truth is discerned, and especially since it is one of the myriad devices resorted to by managements to avoid the responsibility when labor legislation casts welfare obligations on the real employer based on Arts. 38, 32, 42, 43 and 43A. If livelihood of the workmen substantially depends on labor rendered to produce goods and services for the benefit and satisfaction of enterprise, the absence of direct relationship or the presence of dubious intermediaries cannot snap the real life-bond. If, however, there is total dissociation, in fact, between the disowning management and aggrieved workmen, the employer is in substance and in real life-term, by another.

(i) Learned Counsel for workmen has further referred to following case laws-

(ii) ***<u>Gujarat Electricity Board, Thermal Power Station, Gujrat Vs. Hind Mazdoor Sabha, 1995-II-LLJ-790</u>***

Industrial Disputes Act, 1947- Sec. 2(k), 2(s), 10(2) – Contract Labor (Regulation & Abolition) Act 1970- Sec.10 – Abolition of contract labor – industrial dispute – jurisdiction of Labor Court under Industrial Dispute Act – Jurisdiction of Appropriate Government has exclusive jurisdiction to decide in regard to abolition of contract labor – section 10 of the Contract Labor Act would come into play only in cases of genuine contract and not when contract is sham or camouflage – contract Labor abolition act does not provide for status of the contract labor after abolition – Industrial Tribunal whether have jurisdiction to direct principal employer to absorb erstwhile workmen of the contractor and also determine the terms and conditions – Industrial adjudicator will determine the status of a workmen or abolition of contract labor, if industrial dispute was pending before him on date of abolition of contract labor system by appropriate government – workmen of erstwhile contractor can raise dispute on the basis that they are workmen of principal employer and dispute in such cases would be not for abolition of contract labor, but on the footing that workmen were always employees of principal employer - ''

(iii) ***<u>Secretary, Haryana Electricity Board Vs. Suresh and others, AIR-1999-SC-1160</u>***.

"(E) Contract Labor (Regulation and Abolition) Act (37 of 1970), S.10 – Contract Labor – Absorption in service- Electricity Board – Work of keeping plants and station clean and hygienic awarded to contractor- work not of seasonal nature – contract itself stipulating number of employees to be engaged by Contractor – Overall control of working of contract labor including administrative control remaining with the Board – Board neither registered as principal employer nor contractor was licensed contractor – Contract system was thus a mere camouflage which could be easily pierced and employer employee relationship between Board and employee easily visualized – Employees who have worked for more than 240 days cannot therefore be denied absorption."

Learned counsel has referred following para(Paras 15, 17, 19),being reproduced as follows-

'15- It would in this context, however, be convenient to note the observations of the High Court as below:-

"The learned counsel for the petitioner has tried to argue that the findings of fact arrived at by the Labor Court was not based upon proper appreciation of evidence. This plea cannot be accepted in as much as the Labor Court has referred to the whole of the evidence lead in the case before coming to such a conclusion. Otherwise, also in view of the law laid down by the Supreme Court in R.K. Panda's case (supra) the findings of fact arrived at by the Labor Court cannot be set aside in writ jurisdiction particularly when it is neither perverse nor contrary to the record but based only on appreciation of evidence. Keeping in view the nature of the work being carried on by the petitioner, the nature of duties which were performed by the respondents-workmen, the continuity of the work for which the labor was employed and the fact that the wages were paid by the petitioner-employer who supervised and controlled not only the attendance but also discipline of the workmen in the discharge of their duties and keeping in view the conditions of contract of the employer with Kashmira Singh, Contractor, there is no other conclusion which can be arrived at except the one that there existing a relationship of employer and workmen between the contesting parties and the Labor Court had rightly passed the award which is impugned in this petition."

17-As noticed above Draconian concept of law is no longer available for the purpose of interpreting a social and beneficial piece of legislation specially on the wake of the new millennium. The democratic polity ought to survive with full vigour: socialist status as enshrined in the Constitution ought to be given its full play and it is in this perspective the question arises – is it permissible in the new millennium to decry the cry of the labor force desirous of absorption after working for more than 240 days in an establishment and having their workings supervised and administered by an agency within the meaning of Article 12 of the Constitution – the answer cannot possibly be in the affirmative – the law courts exist for the society and in the event law courts feel the requirement in accordance with principles of justice, equity and good conscience, the law courts ought rise up to the occasion to meet and redress the expectation of the people. The expression 'regulation' cannot possibly be read as contra public interest but in the interest of public.

19-It has to be kept in view that this is not a case in which it is found that there was any genuine contract labor system prevailing with the Board. If it was a genuine contract system, then obviously, it had to be abolished as per Section 10 of the Contract Labor Regulation and Abolition Act after following the procedure laid down therein. However, on the facts of the present case, it was found by the Labor Court and as confirmed by the High Court that the so called contractor Kashmir Singh was a mere name lender and had procured labor for the Board from the open market. He was almost a broker or an agent of the Board for that purpose. The Labor Court also noted that the Management witness Shri A.K. Chaudhary also could not tell whether Shri Kahsmir Singh was a licensed contractor or not. That workmen had made a statement that Shri Kashmir Singh was not a licensed contractor. Under these circumstances, it has to be held that factually there was no genuine contract system prevailing at the relevant time wherein the Board could have acted as only the principal employer and Kashmir Singh as a licensed contractor employing labor on his own account. It is also pertinent to note that nothing was brought on record to indicate that even the Board at the relevant time, was registered as principal employer under the Contract Labor Regulation and Abolition Act. Once the Board was not a principal employer and the so called contractor Kashmir Singh was not a licensed contractor under the Act, the inevitable conclusion that had to be reached was to the effect that the so called contract system was a mere camouflage, smoke and a screen and disguised in almost a transparent veil which could easily be pierced and the real contractual relationship between the Board, on the one hand, and the employees, on the other, could be clearly visualised.'

(iv) ***Bharat Bank Limited Vs. Employees of Bharat Bank Limited, AIR 1950 SC 188***.

The Hon'ble Supreme Court has held that the Tribunal has got wide power in given circumstances, it can create contract between parties in the interest of justice. No other Courts vested with such power.

21. On the other hand learned Counsel for the Management referred to a judgement of Supreme Court in **case The Director SAIL India vs. IspatKhadandan Mazdoor Union civil appeal no 8081-8082 of 2011 reported in AIR 2019 SC 3601. Para 33,35,39,41,44,46,48,49** have been specifically referred to by learned counsel as follows:-

Before we may advert to examine the question in the instantappeals any further, it will be apposite to take note of the legaleffect of the prohibition notification issued by the appropriateGovernment in exercise of power under Section 10(1) of CLRAAct and its exposition by the Constitution Bench of this Court in Steel Authority of India Ltd. and Others (supra) overruling the judgment in Air India Statutory Corporation and Others (supra).

The legal consequence of Section 10(1) of the CLRA Act, has been noticed in paragraph 68, 88, 105 and 125 as follows : 24

"68. We have extracted above Section 10 of the CLRA Act which empowers the appropriate Government to prohibit employment of contract labor in any process, operation or other work in any establishment, lays down the procedure and specifies the relevant factors which shall be taken into consideration for issuing notification under sub¬section (1) of Section 10. It is a common ground that the consequence of prohibition notification under Section 10(1) of the CLRA Act, prohibiting employment of contract labor, is neither spelt out in Section 10 nor indicated anywhere in the Act.

In our view, the following consequences follow on issuing a notification under Section 10(1) of the CLRA Act:

(1) contract labor working in the establishment concerned at the time of issue of notification will cease to function;

(2) the contract of principal employer with the contractor in regard to the contract labor comes to an end;

(3) no contract labor can be employed by the principal employer in any process, operation or other work in the establishment to which the notification relates at any time thereafter;

(4) the contract labor is not rendered unemployed as is generally assumed but continues in the employment of the contractor as the notification does not sever the relationship of master and servant between the contractor and the contract labor;

(5) the contractor can utilise the services of the contract labor in any other establishment in respect of which no notification under Section 10(1) has been issued where all the benefits under the CLRA Act which were being enjoyed by it, will be available;

25 (6) if a contractor intends to retrench his contract labor, he can do so only in conformity with the provisions of the ID Act. The point now under consideration is: whether automatic absorption of contract labor working in an establishment, is implied in Section 10 of the CLRA Act and follows as a consequence on issuance of the prohibition notification thereunder. We shall revert to this aspect shortly. 88. If we may say so, the eloquence of the CLRA Act in not spelling out the consequence of abolition of contract labor system, discerned in the light of various reports of the Commissions and the Committees and the Statement of Objects and Reasons of the Act, appears to be that Parliament intended to create a bar on engaging contract labor in the establishment covered by the prohibition notification, by a principal employer so as to leave no option with him except to employ the workers as regular employees directly. Section 10 is intended to work as a permanent solution to the problem rather than to provide a onetime measure by departmentalizing the existing contract labor who may, by a fortuitous circumstance be in a given establishment for a very short time as on the date of the prohibition notification. It could as well be that a contractor and his contract labor who were with an establishment for a number of years were changed just before the issuance of prohibition notification. In such a case there could be no justification to prefer the contract labor engaged on the relevant date over the contract labor employed for a longer period earlier. These may be some of the reasons as to why no specific provision is made for automatic absorption of contract labor in the CLRA Act. 105. The principle that a beneficial legislation needs to be construed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. We have already noticed above the intendment of the CLRA Act that it regulates the conditions of service of the contract labor and 26 authorizes in Section 10(1) prohibition of contract labor system by the appropriate Government on consideration of factors enumerated in sub¬section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, in our view, provides no ground for absorption of contract labor on issuing notification under sub¬section (1) of Section 10. Admittedly, when the concept of automatic absorption of contract labor as a consequence of issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or this Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be it absorption of contract labor in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible. We have already held above, on consideration of various aspects, that it is difficult to accept that Parliament intended absorption of

contract labor on issue of abolition notification under Section 10(1) of the CLRA Act.

125. The upshot of the above discussion is outlined thus: (1)(a) Before 28.11.986, the determination of the question whether the Central Government or the State Government is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression "appropriate Government" as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry, or the establishment of any railway, cantonment board, major port, mine or oilfield or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which 27 the establishment was situated, would be the appropriate Government; (b) After the said date in view of the new definition of that expression, the answer to the question referred to above, has to be found in clause (a) of Section 2 of the Industrial Disputes Act; if (i) the Central Government company/undertaking concerned or any undertaking concerned is included therein eo nomine, or (ii) any industry is carried on:

(a) by or under the authority of the Central Government, or

(b) by a railway company; or (c) by a specified controlled industry, then the Central Government will be the appropriate Government; otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.

(2)(a) A notification under Section 10(1) of the CLRA Act prohibiting employment of contract labor in any process, operation or other work in any establishment has to be issued by the appropriate Government: (1) after consulting with the Central Advisory Board or the State Advisory Board, as the case may be, and (2) having regard to

(i) conditions of work and benefits provided for the contract labor in the establishment in question, and (ii) other relevant factors including those mentioned in sub¬section (2) of Section 10;

(b) Inasmuch as the impugned notification issued by the Central Government on 9¬12¬1976 does not satisfy the aforesaid requirements of Section 10, it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on the basis of this judgment no order passed or no action taken giving effect to the said notification on or before 28 the date of this judgment, shall be called in question in any tribunal or court including a High Court if it has otherwise attained finality and/or it has been implemented.

(3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labor on issuing a notification by the appropriate Government under sub¬section (1) of Section 10, prohibiting employment of contract labor, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labor working in the establishment concerned.

(4) We overrule the judgment of this Court in Air India case [(1997) 9 SCC 377] prospectively and declare that any direction issued by any industrial adjudicator/any court including the High Court, for absorption of contract labor following the judgment in Air India case [(1997) 9 SCC 377] shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labor or otherwise, in an industrial dispute brought before it by any contract labor in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labor for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so¬called contract labor will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labor in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

29 (6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labor in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labor, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

33. The exposition of the judgment of the Constitution Bench of this Court made it clear that neither Section 10 nor any other provision in the CLRA Act provides for automatic absorption of contract labor on issuing a notification by the appropriate Government under Section 10(1) of CLRAAct.Consequently, the principal employer is not required or is underlegal obligation by operation of law to absorb the contract labor working in the establishment. 34. This court in Steel Authority of India Ltd. and Others (supra) further held that on a issuance of notification under Section 10(1) of the CLRA Act, prohibiting employment of contract labor in any process, operation or other work, if an 30 industrial dispute is raised by any contract labor in regard to condition of service, it is for the industrial adjudicator to consider whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labor for work of the establishment under a genuine contract, or as a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of statutory benefits. If the contract is found to be sham, nominal or camouflage, then the so-called labor will have to be treated as direct employee of the principal employer and the industrial adjudicator should direct the principal employer to regularise their services in the establishment subject to such conditions as it may specify for that purpose in the facts and circumstances of the case.

35. On the other hand, if the contract is found to be genuine and a prohibition notification has been issued under Section 10(1) of the CLRA Act, in respect of the establishment, the principal employer intending to employ regular workmen for the process, operation or other work of the establishment in regard to which the prohibition notification has been issued, it shall give 31 preference to the erstwhile contract labor if otherwise found suitable, if necessary by giving relaxation of age as it appears to be in fulfilment of the mandate of Section 25(H) of the Industrial Disputes Act, 1947. 36. It may be noted that the learned counsel for the respondent has placed reliance on the judgments of this Court in Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops and Establishments and Another4 ; Hussainbhai, Calicut Vs. Alath Factory Thezhilali Union, Kozhikode and Others5 ; Indian Petrochemicals Corporation Ltd. and Another Vs. Shramik Sena and Others6 and these cases have been considered by the Constitution Bench of this Court in Steel Authority of India Ltd. and Others(supra) of which a detailed reference has been made by us.

37. Tests which are to be applied to find out whether the person is an employee or an independent contractor in finding out whether the contract labor agreement is sham, nominal or a 4 1974(3) SCC 498 5 1978(4) SCC 257 6 1999(6) SCC 439 32 mere camouflage has been examined by this Court in International Airport Authority of India Vs. International Air Cargo Workers' Union and Another7 by the two¬judge Bench of this Court. The relevant paras are as under:¬ "38. The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labor agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labor, necessarily, the labor supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labor, when such labor is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

38. These are the broad tests which have been laid down by this Court in examining the nature and control of the employer and 7 2009 (13) SCC 374 33 whether the agreement pursuant to which contract labor has been engaged through contractor can be said to be sham, nominal and camouflage.

46. To test it further, apart from the statutory compliance which every principal establishment is under an obligation to comply with, its non¬compliance or breach may at best entail in penal consequences which is always for the safety and security of the employee/workmen which has been hired for discharge of the nature of job in a particular establishment. The exposition of law has been further considered in International Airport Authority of India case(supra) where the contract was to supply of labor and necessary labor was supplied by the contractor who worked under the directions, supervision and control of the principal employer, that in itself will not in any manner construe the contract entered between the contractor and contract labor to be sham and bogus per se.Thus, in our considered view, if the scheme of the CLRA Act and other legislative enactments which the principalestablishment has to comply with under the mandate of law and taking note of the oral and documentary evidence which came on record, the finding which has been recorded by the CGIT under its award dated 16th September, 2009 in absence of the finding of fact recorded being perverse or being of no evidence and even if there are two views which could possibly be arrived at, the view expressed by the Tribunal ordinarily was not open to be interfered with by the High Court under its limited scope of judicial review under Article 226/227 of the Constitution of India and this exposition has been settled by this Court in its various judicial precedents.

48. It is true that judgment in Dena Nath and Others (supra) is in reference to failure of compliance of Section 7 and 12 and not in reference to Section 10(1) of the CLRA Act but if we look into the scheme of CLRA Act which is a complete code in itself, non compliance or violation or breach of the provisions of the CLRA Act, it result into penal consequences as has been referrd to in Sections 23 to 25 of the Act and there is no provision which would entail any other consequence other than provided under Section 23 to 25 of the Act.

Learned counsel for Management has further referred to a decision of Supreme Court in **SLP No.33798-33799 2014,BHARAT HEAVY ELECTRICALS LTD. Vs MAHENDRA PRASAD JAKHMOLA & ORS.**

22.The relevant portion of the judgment referred to by learned counsel is being reproduced as follows:-

"***We, now come to some of the judgments cited by Shri Sudhir Chandra and Ms. Asha Jain. In 'General Manager, (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon v. Bharat Lala and Another' [2011 (1) SCC 635], it was held that the well recognised tests to find out whether contract laborers are direct employees are as follows:***

"10. It is now well settled that if the industrial adjudicator finds that the contract between the principal employer and the contractor to be a sham, nominal or merely a camouflage to deny employment C.A. NOS. 1799-1800/ 2019 etc. (@SLP (C) Nos. 33747-33748/ 2014 etc.) benefits to the employee and that there was in fact a direct employment, it can grant relief to the employee by holding that the workmen is the direct employee of the principal employer. Two of the well-recognized tests to find out whether the contract laborers are the direct employees of the principal employer are: (i) whether the principal employer pays the salary instead of the contractor;

and (ii) whether the principal employer controls and supervises the work of the employee. In this case, the Industrial Court answered both questions in the affirmative and as a consequence held that the first respondent is a direct employee of the appellant" The expression 'control and supervision' were further explained with reference to an earlier judgment of this Court as follows:

"12. The expression "control and supervision" in the context of contract labor was explained by this Court in International Airport Authority of India v. International Air Cargo Workers' Union thus: (SCC p.388, paras 38-39) "38…. if the contract is for supply of labor, necessarily, the labor supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labor, when such labor is assigned/allotted/sent to him.

But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer C.A. NOS. 1799-1800/ 2019 etc. (@SLP (C) Nos. 33747-33748/ 2014 etc.) but that is secondary control. The primary control is with the contractor." From this judgment, it is clear that test No. 1 is not met on the facts of this case as the contractor pays the workmen their wages. Secondly, the principal employer cannot be said to control and supervise the work of the employee merely because he directs the workmen of the contractor 'what to do' after the contractor assigns/ allots the employee to the principal employer. This is precisely what paragraph 12 explains as being supervision and control of the principal employer that is secondary in nature, as such control is exercised only after such workmen has been assigned to the principal employer to do a particular work.

We may hasten to add that this view of the law has been reiterated in 'Balwant Rai Saluja and Another v. Air India Limited and Others' [2014(9) SCC 407], as follows:

"65. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia:

(i) who appoints the workers;

(ii) who pays the salary/remuneration;

(iii) who has the authority to dismiss;

(iv) who can take disciplinary action;

(v) whether there is continuity of service; and

(vi) extent of control and supervision i.e. whether there exists complete control and supervision.

As regards extent of control and supervision, we have already taken note of the observations in Bengal Nagpur Cotton Mills case [(2011) 1 SCC 635], International Airport Authority of India case [2009 13 SCC 374] and Nalco case [(2014) 6 SCC 756]." C.A. NOS. 1799-1800/ 2019 etc. (@SLP (C) Nos. 33747-33748/ 2014 etc.) However, Ms. Jain has pointed out that contractors were frequently changed, as a result of which, it can be inferred that the workmen are direct employees of BHEL."

26. Another case **Bengal Nagpur Cotton Mills 2011 Vol.1 SCC 635 (para-10, 14, 16, 8 and 12)** referred to by learned counsel is also the relevant paragraphs of which are being reproduced as follows:-

"**The expression 'control and supervision' in the context of contract labor was explained by this court in International Airport Authority of India v. International Air Cargo Workers Union [2009 (13) SCC 374] thus: "If the contract is for supply of labor, necessarily, the labor supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor. The principal employer only controls and directs the work to be done by a contract labor, when such labor is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."**

The case of **Himmat Singh vs ICI India (2008) 3 SCC P**referred to by learned counsel for Management the referred paragraphs of the judgment are being reproduced as follows:-

"A few observations made by the High Court which are relevant need to be noted. It was held by the High Court as follows: "The labor court has held that the petitioners were not working as helpers to the fitters; they were not paid by the company; and were engaged on contract for intermittent work i.e. they did not have regular or permanent work. The work that the petitioners do may be similar to the work of the workmen of the company, but they are not doing the work that is ordinary part of the industry. This is for reason that they- ? did not have permanent work; ? were engaged in intermittent work and ? themselves claimed to be workmen of the contractor Rehman in proceedings under Rule 25 of the Labor

Contract Act and got benefit under the same." 9. Similarly, the Labor Court noted that contractor Rehman had applied to the administration for licence under the State Contract Labor Act and considering the nature of the contract licence has been granted to him. 10. In Steel Authority of India Ltd. v. Union of India &Ors. [2006(12) SC 233] it was inter-alia held as follows: "The workmen whether before the Labor Court or in writ proceedings were represented by the same union. A trade union registered under the Trade Unions Act is entitled to espouse the cause of the workmen. A definite stand was taken by the employees that they had been working under the contractors. It would, thus, in our opinion, not lie in their mouth to take a contradictory and inconsistent plea that they were also the workmen of the principal employer. To raise such a mutually destructive plea is impermissible in law. Such mutually destructive plea, in our opinion, should not be http://JUDIS.NIC.IN SUPREME COURT OF INDIA Page 3 of 3 allowed to be raised even in an industrial adjudication. Common law principles of estoppel, waiver and acquiescence are applicable in an industrial adjudication." 11. In view of the factual position highlighted above and the ratio of the decision in Steel Authority's case (supra), the inevitable result is that the appeal is sans merit, deserves dismissal, which we direct with no order as to costs.

27. Airport **Authority of India vs. Indian AirportKamgar 2011 Vol.1 L.L.J page-II Bombay para 32,33,37** referred to by learned counsel for the Management. Where in, award allowing reference regarding same character of engagement of contract labor was held now allowed in light of facts peculiar to the case referred.

Another case **of Post Master General vs. Tutudas(2007)5 SCC 317.**

Wherein, it has been held that **illegal/improper grant of regularization to similarly situated persons does not create and entitlement to regularization on the ground of equal treatment under article 14 of constitution as equality is a positive concept and can not be invoked where any illegality has been committed or where no legal right has been established.**

In another case **Dhampur Sugar Mills Vs Bhola Singh AIR 2005 SC page no 1790,** referred to by learned counsel for management it has been laid down that:

completion of 240 days in continuous service may not itself be ground for regularization of service particularly in case when workmen had not been appointed in accordance with rules.

The case of **Haldiya Employees Union Vs. Indian Oil Corporation 2005 CAB IC page 2078 S**C also referred to by learned counsel of which relevant paragraphs 15,16,17 & 20 specifically referred by the learned counsel are being reproduced as follows:-

"**No doubt, the respondent management does exercise effective control over the contractor on certain matters in regard to the running of the canteen but such control is being exercised to ensure that the canteen is run in an efficient manner and to provide wholesome and healthy food to the workmen of the establishment. This however does not mean that the employees working in the canteen have become the employees of the management. A free hand has been given to the contractor with regard to the engagement of the employees working in the canteen. There is no clause in the agreement stipulating that the canteen contractor unlike in the case of Indian Petrochemicals Corporation Ltd. & Another (supra) shall retain and engage compulsorily the employees who were already working in the canteen under the previous contractor. There is no stipulation of the contract that the employees working in the canteen at the time of the commencement of the contract must be retained by the contractor. The management unlike in Indian Petrochemicals Corporation Ltd. case (supra) is not reimbursing the wages of the workmen engaged in the canteen. Rather the contractor has been made liable to pay provident fund contribution, leave salary, medical benefits to his employees and to observe statutory working hours. The contractor has also been made responsible for the proper maintenance of registers, records and accounts so far as compliance of any statutory provisions/obligations are concerned. A duty has been cast on the contractor to keep proper records pertaining to payment of wages etc. and also for depositing the provident fund contributions with authorities concerned. Contractor has been made liable to defend, indemnify and hold harmless the employer from any liability or penalty which may be imposed by the Central, State or local authorities by reason of any violation by the contractor of such laws, regulations and also from all claims, suits or proceedings that may be brought against the management arising under or incidental to or by reason of the work provided/assigned under the contract brought by employees of the contractor, third party or by Central or State Government Authorities. The management has kept with it the right to test, interview or otherwise assess or determine the quality of the employees/workers with regard to their level of skills, knowledge, proficiency, capability etc. so as to ensure that the employees/workers are competent and qualified and suitable for efficient performance of the work covered under the contract. This control has been kept by the management to keep a check over the**

quality of service provided to its employees. It has nothing to do with either the appointment or taking disciplinary action or dismissal or removal from service of the workmen working in the canteen. Only because the management exercises such control does not mean that the employees working in the canteen are the employee of the management. Such supervisory control is being exercised by the management to ensure that the workers employed are well qualified and capable of rendering the proper service to the employees of the management."

Following settled propositions of law emerges:-

A. The point whether the contract is sham, bogus and camouflage will arise only when the work contract which was allotted to the contractor was of non-prohibited category and also in cases where though the work contract which was allotted to the contractor was of non-prohibited category it become in prohibited category later on under the notification issued by appropriate Government under Section 10(1) of CLRA Act.

B. In reaching at a point whether the work contract was sham bogus and camouflage, the relevant facts for consideration will be as to firstly,who was to exercise the effective supervision and control, secondly,at whose site, the workmen were engaged, thirdly, who paid the wages and fourthly, who provided instruments and training and other facts like this is settled in the aforesaid judgments. It is also settled that what is the effective control and supervision from industry to industry and control and supervision is not only criteria for reaching at the conclusion whether the work contract was sham, bogus or camouflage also what effective control and supervision is shall differ from industry to industry fact wise.

28. Now coming into the fact and evidence in the present case in the light of settled provisions as mentioned in the case laws referred to from both the sides. The case of workmen union on this point is that in fact the workmen were engaged by the Management and wanted to deprive them of their legally admissible due to management set up camouflage contractor and has given the color of work done under the contractor by a contract labor. According to the workmen/union, the management engaged a contractor for payment of less wage as a smoke screen and a camouflage in the eyes of law. The process of which was to deny the rights and other rights to the workmen. The workmen were doing their duties under the strict provisions of management of SECL, they were given vocational training and issued certificate for the job. Tools for the job was also supplied by the management. They worked under the supervision and control of the Management, coupled with the fact that they were engaged in the work of perennial nature in violation of NCWA as well as in violation of CLRA Act because of their work being of prohibited nature also clearly shows that the contract and the contractor as well as theory of contract set up by management is simply a false and fake. It is sham and camouflage to deny the workmen of their legally admissible dues which is proved from record whereas the learned counsel for management has submitted that the over all control and supervision was that of the contractor. The management was only concerned with the work and had limited control and supervision over the workmen. Also, it has been submitted that instrument and vocational training was provided in the light of rules provided in this respect. Payment of wages were made by the contractor under supervision of management as the rules provided for this, hence the fact that the agreement was a sham and a camouflage cannot be held proved, as submitted by learned counsel for management.

29. From the evidence in the form of witness and documents, the management does not deny that the work of the workmen was supervised by management. According to management, it was a limited supervision and control and management also does not deny that work was given to the management by the workmen and also that the instruments ie; light lamp and other instruments were supplied by the management. Management also does not deny that payment of wages was made under their supervision but has put a caveat that payment was made by the contractor under the supervision of management as it was provided in the work agreement & rules.

30. Learned counsel for the workmen further submits that this Tribunal is obligated to lift the veil and see the facts taking into account the total circumstances of the case in coming to the conclusion whether the contract is sham, bogus and nongenuine. He further submits that may be apparently the work contract may appear legal but this Tribunal will have to lift the veil in this case to do full justice between the parties . Learned counsel has referred to para-18 and 21 of the case "**General Manager, Oil and Natural Gas Commission, Silchar Vs. Oil and Natural Gas Commission Contractual workers union, (2008)12 Supreme Court Cases 275**".

1. The relevant portion of the judgement is quoted below: -

*"**Para-18:…… We, however, believe that this present case is not one of regularization simpliciter such as in the case of an ad hoc or casual employee claiming this privilege. The basic issue in the present case is the status of the workmen and whether they were the employees of ONGC or the contractor and in the event that they were the employees of the former, a claim to be treated on a par with other***

such employees. As would be clear from the discussion a little later, this was the basic issue on which the parties went to trial, notwithstanding the confusion created by the ill-worded reference.

Para-21: Even ONGC had admitted that since 1988, there was no licensed contractor and that wages were being paid through one of the leaders of Union, and one person who was named as contractor, was in fact himself a workmen whose name appeared in acquaintance roll. Real issue therefore was regarding status of workmen as employees of ONGC or of contractor, and it having found that workmen were employees of ONGC, they would ipso facto be entitled to benefits available in that capacity.Issue of regularization would therefore pale in insignificance. The Industrial Tribunal and Division Bench of the High Court were justified in lifting the veil in order to determine nature of employment."

31. Learned Counsel for Management has referred to Judgment of Supreme **Court Oshiar Prasad & Ors. Vs. Employees in relation to management Sudam-D coal washery of BCCI Dhanbad- 2015-ILLJ-513SCpara-25 which is as follows-**

It is thus clear that the appropriate Government is empowered to make a reference under Section 10 of the Act only when "Industrial dispute exists" or "is apprehended between the parties". Similarly, it is also clear that the Tribunal while answering the reference has to confine its inquiry to the question(s) referred and has no jurisdiction to travel beyond the question(s) or/and the terms of the reference while answering the reference. A fortiori, no inquiry can be made on those questions, which are not specifically referred to the Tribunal while answering the reference.

32. The reference has been mentioned in this Judgment earlier which is regarding the action of the non-regularisation of the workmen , whether it is legal or justified and if it is not then what relief the workmen are entitled. Hence, **the fact in issue** is whether non-regularization of the workmen who performed various duties in Harad Incline Colliery since 1990 to 1992 is legal and justified or not and **the relevant facts to decide the fact in issue** will get settled in the light of the pleadings of the parties in respect of their rival claims. Hence, there is no question of travelling beyond reference in this case but **while in the process of reaching at the conclusion with regard to the fact in issue, whether the so called agreements were sham or genuine or it is camouflage to deny the workmen of their benefits under law is a relevant fact and to record finding in this respect naturally the veil has to be lifted.**

33. It is further submitted by learned counsel for workmen union that the burden of proof lies on management to prove that the concerned workers are contract labor and also the contract is genuine. Union place reliance on the judgment reported in the case of ***"Caparo Engineering India Limited Vs. Pradhanmantri Engineering Shramik Sanghthan, 2019 (1)MPLJ 147***." The relevant portion is reproduced below: -

"(b) Evidence Act, S.102 – Burden of proof – Petitioner-company's case that employees are contract labor – therefore, Labor Court has rightly shifted burden on them to establish this – No error committed by Labor Court while directing petitioner to lead evidence and prove that respondents are contract laborers (para-31)"

34. The learned counsel for union alternatively submits that even in the circumstances, the union has not been able to prove that they were working in prohibited category of work notified by the Government of India, even then from the pleadings of the union, the employer-employee relationship between the management and the workmen is clearly established.

35.In all the case laws referred to by the learned counsel for the parties, one thing is common is that the work contracts were in non prohibited category when they were allotted to the Contractors. . They came under prohibited category only later on whereas in the case in hand on the basis of evidence on record it has been established that the so called work contract between the employer and contractor was prohibited by law being violative of NCWA and notification under Section 10(1) of the CLRA Act prohibiting work of that type being taken by contractors long before the contractor was engaged to execute the work done by the principal employer. Hence the referred cases can be easily distinguished from the case in hand on this point as mentioned earlier. It is not disputed between the parties that vocational training was given by the Management to the workers, tools were provided by the Management to the workers. Management exercised control and supervision on day to day working of the workmen and wages were paid in person by the Management and its representatives. According to the Management counsel all this was done as it was so provided in the work contract.

36. Reference of Section 2(d) of Indian Contract Act requires to be taken here which define all the contract as it is so because CLRA Act does not define contract. Section 2(d) reads as under:-

"Contract is an agreement enforceable by law."

According to **Section 23 of Indian Contracts Act** which deals with the as what consideration and object are lawful and what not is being reproduced as follows:-

"**what considerations and objects are lawful and what not-….**

The consideration or object of an agreement is lawful unless-

It is forbidden by law, or

Is of such nature that,if permitted, it would defeat the provision of any law or is……..……."

Similary Section 24 of the said Act is also being reproduced as follows:-

"**If any part of a single consideration for one or more objects, or any or any part of several considerations for a single object, is unlawful, the agreement is void."**

37. In the light of the above noted provisions of Indian Contract Act since even the first work agreement between the parties was against prohibitions of law as it defeats the provisions of NCWA and Section 10(1) of the CLRA Act at the very time it was entered into by the parties because these prohibitions were enforced before the agreement was entered into by the parties will be *void ab intio* In law meaning thereby there is no contract at all as per law between the parties. Same will be the fate of other two so called work contracts entered into by the parties after the first work agreement . Thus it is not legally permissible on the part of Management to contend that all the work of supervision, training and other actions detailed earlier were in the light of terms of the work agreement because the said work agreement ar*e void ab initio*, as discussed above right from the date of the agreements. The natural inference/consequences of this will be that it will be deemed that in fact the control of supervision of workers by Management, training of worker's management, providing tools and instruments by Management etc. where done by the Magistrate on their own. It cannot be taken to be done if the work contract is *void ab initio*, admitted is the fact between the parties is that the said workmen worked on the sight which was owned by the Management i.e. is to say that the work place was the premises of Management i.e. principal employer.

38. Hence following facts are held proved in the light of above discussion which is as follows:-

(1) The work agreement was violative of legal provisions and prohibitions from the date the parties entered into the agreement.

(2) Since the object of the work agreement was not to defeat the provisions of law i.e. to say not lawful hence all the three work agreements are *void ab intio* from their date of inception.

(3) As the work agreement are *void ab initio*, hence cannot be held that Management control and supervision and other actions as discussed above, was done by Management in the light of the terms of the work agreement.

39. Accordingly, in the light of above provisions, this Tribunal is constrained **to hold that the work agreement between the principal employer and allotted to contractor was sham, bogus and camouflage, defeating the provisions of law, the sole aim of which was to deprive the workmen of their legally admissible claims**, **stands proved**.

Issue No.2 is answered accordingly.

40. Issue No.3:-

In the light of the findings recorded earlier at Issue No.1 & 2 the workmen who were engaged via the sham and bogus agreement as a camouflage shall be deemed to be under employment of the principal employer which is SECL and are held so.

41. Since the Management has disputed the number and identity of the workmen annexed as a list to the reference , hence the first question arises is how many and who of the list have been proved to be engaged and secondly whether their disengagement is justified in law and fact or not.

42. Perusal of the record reveals that there is a list of 112 workers Annexed to the reference who to the workmen union according workmen union were engaged in the aforesaid activity. It came out that one of the workmen Vijay at serial No.33 has filed application dated 6-11-2006 not to press the claim due to some clerical mistake in the name of his father for which the Union is said to have taken the matter with the Labor Ministry for correction. Hence the claim of this workmen Vijay on this point is not considered.

43. According to the statement of defense, filed by Management it has been pleaded in para 15 of the written statement that since the work was executed through contractor, it is not known whether the applicant workmen worked for SECL or not.

44. The contractor, in his written statement of defense has not denied the claim of the workmen/union that as many as 112 workers were engaged by them for executing the work. Perusal of the record further reveals that this contractor did not appeal before the Court for his evidence. It also comes out that under order of Court dated 24-2-1999 the workmen/Union filed a list, photocopy of 108 persons along with their parentage, identity, details of address but the unfortunate thing is that there is no evidence from the side of workmen/union to prove this list. The workmen Union should have examined the persons who checked the identity mark and after confirming their names, parentage and address as well as the identity of the person mentioned in the list affixed their photographs.

45. In absence of this, the list cannot be read in support of the workmen/union. It further comes out that the workmen/union has further filed an application with the list of workmen whose parentage (father's name) not mentioned correcting the list attached as Annexure to the reference and sought correction in the reference . Accordingly, which has been refused on the ground that no such correction in reference is possible by Court, the correction is to be made by the Competent Authority who has made reference. Names of such persons with respect to serial number in the list annexed with the reference as mentioned in the said application by workmen/union is given as follows:-

Sl. Number of the list sent by the Govt.	**Correct Name of workmen with father's name.**
12.	Tooman s/o Munshi.
33.	Vijay Bahadur Singh/ Ramavtar Singh
38.	Jawahar/ Dadan Das.
44.	Shivmurat/ Chandrama
50.	Viplav/ Chinmay
56.	Raj Kumar/ Jamuna
66.	Rakesh/ Jagdish
77.	Kamal/ Shivcharan
83.	Nathudas/ Jeetram.
86	Mahesh Prasad/ Ramvishal

Since the workmen/union has itself admitted that identity as of these workers as mentioned in the list, their case also is to be considered on the point whether they were engaged or not?

46. The workmen witnesses have stated on oath that 112 workmen as mentioned in the list annexed to the reference were engaged in the work, they worked in three shifts but their statements cannot be taken as corroborated with the work or of the work included in the list annexed to the reference were actually engaged.

47. The workmen/union has also filed Vocational Training Certificates of 32 workers but no witness has been examined from the side of Union to prove this list, hence this list also cannot be taken as correct of the case of workmen on the point of identity of workmen.

48. The Management witnesses have stated on oath that only 41 out of the 42 workers were engaged in the said work, Management has filed and proved Exhibit M-9 of 42 workers . Hence as reference the 42 workers whose Form-B has been filed by Management is Exhibit M-11(1) to M11(42). Their case can be held proved that they were actually engaged as claimed by the workmen/union regarding rest of the workmen, it cannot be held proved that they were also engaged for execution of the said work or had worked under the Management.

49. Hence in the light of above discussion , only 42 workers names as follows, whose claim has been supported by Exhibit M-9/1 to M9/42 are held to have been engaged for the execution of the work regarding the rest of the workmen, their case is held not proved:-

S.NO.	**NAME**	**FATHER'S/ HUSBAND'S**
1	Bahori Singh	Shri Pream Singh
2	Maan Singh	Shri Battu Lal Singh
3	Kamleshwar Singh	Shri Ram Raton Singh
4	Ram singh	Shri Raton Singh

5	Nawal Singh	Shri Rameshaey
6	Bahel Singh	Shri Ramcharan Singh
7	Chawelal	Shri Anandram
8	Deepchand	Shri Loknath
9	Gaga	Shri Daddi
10	Doman	Shri Munshi
11	Bhupat Singh Gond	Shri Balkran Singh Gond
12	Jeevan Lal	Shri Jagdish
13	Babua	Shri Moliya
14	Baldave	Shri Samylal
15	Amritlal Vishwakarma	Shri Ramadhin Vishwakarma
16	Jawaharlal mehra	Shri Dadan Das
17	Chotelal	Shri Samylal
18	Baechu	Shri Bichlu
19	Likhari	Shri Lokai
20	Rajkumar	Shri Dasrath
21	Dilep	Shri Shyamsunder
22	Asharam	Shri Gullaram Kewat
23	Shyamlal	Shri Gheenu
24	Ramdas	Shri Mangal
25	Lalan	Shri Saiku
26	Jagdish	Shri Ramkumar
27	Shyamlal	Shri Jagdish
28	Ramkalun	Shri Mangaldeen
29	Salik Singh	Shri Suradeen
30	Awdesh Prasad	Shri Jailal
31	Raton	Shri Bihar
32	Arjun Singh	Shri sukhsen
33	Bhagwan Deen	Shri mandal
34	Menaj	Shri Akbar
35	Ram Prasad	Shri Bekai
36	Shivmurat	Shri Chamru kewat
37	Chotelal	Shri Jagdesh
38	Maku	Shri Lambu
39	Rattu	Shri Lalli
40	Munna	Shri K.ghai
41	Rameshwar	Shri Marokha
42	Bablu	Shri munna

50. Reference of Section 2(oo) of Industrial Disputes Act, Section 25(b)(2), Section 25(f) and Section 25(N) of Industrial Dispute Act,1947 are being reproduced as follows:-

2[(oo) "retrenchment" means the termination by the employer of the service of a workmen for any any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workmen; or (b) retirement of the workmen on reaching the age of superannuation if the contract of employment between the employer and the workmen concerned contains a stipulation in that behalf;

25F. Conditions precedent to retrenchment of workmen.—No workmen employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until— (a) the workmen has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workmen has been paid in lieu of such notice, wages for the period of the notice; (b) the workmen has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

2 [25N. Conditions precedent to retrenchment of workmen.—(1) No workmen employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,— (a) the workmen has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workmen has been paid in lieu of such notice, wages for the period of the notice; and (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf. (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner. (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen. (4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days. (5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order. 1. Sub-section (6) re-numbered as sub-section (10) by Act 49 of 1984, s. 4 (w.e.f. 18-8-1984). 2. Subs. by s. 5, ibid., for section 25N (w.e.f. 18-8-1984). 33 (6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workmen, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference. (7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workmen and the workmen shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him. (8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct, that the provisions of sub- section (1) shall not apply in relation to such establishment for such period as may be specified in the order. (9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workmen who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of

retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.]

Conditions precedent to retrenchment of workmen.—No workmen employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until— (a) the workmen has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workmen has been paid in lieu of such notice, wages for the period of the notice; (b) the workmen has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

2 [25N. Conditions precedent to retrenchment of workmen.—(1) No workmen employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,— (a) the workmen has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workmen has been paid in lieu of such notice, wages for the period of the notice; and (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf. (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner. (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen. (4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days. (5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order. 1. Sub-section (6) re-numbered as sub-section (10) by Act 49 of 1984, s. 4 (w.e.f. 18-8-1984). 2. Subs. by s. 5, ibid., for section 25N (w.e.f. 18-8-1984). 33 (6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workmen, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference. (7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workmen and the workmen shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him. (8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct, that the provisions of sub- section (1) shall not apply in relation to such establishment for such period as may be specified in the order. (9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workmen who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.]

Section 25.B.(Definition of continuous service):-

Where a workmen is not in continuous service within the meaning of clause(1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) For a period of one year, if the workmen, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workmen employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) For a period of six months, if the workmen, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety-five days , in the cae of workman employed below ground in a mine and

(ii) one hundred and twenty days, in any other case.

Explanation-For that purposes of clause(2), the number of days on which a workmen has actually worked under an employer shall include the days on which-

(i) he has been laid off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act,1946(20 of 1946), or under the Act or under any other law applicable to the Industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) In the case of a female, she has been on maternity leave; soi however, that the total period of such maternity leave does not exceed twelve weeks.

51. Now further point arise whether it is proved from the evidence on record that the aforesaid 42 workmen worked for a period of 190 days as mentioned under Section 25 and Section 21(a) of the Industrial Disputes Act,1947 which applies to mines and is applicable in the case in hand or not ?

52. The workmen witnesses have stated that they worked continuously and documents produced by Management regarding contract and execution of work also states that they worked continuously for two years preceding date of their disengagement. There is nothing on record to indicate otherwise, hence as regard to 42 workers as mentioned in Exhibit M-9 referred above, their case that they worked for a period of 190/240 days in the year preceding their disengagement is held proved.

Since it is not the case of the Management that any notice or compensation was given to the workmen, their disengagement is held against law and fact.

Issue No.3 is answered accordingly.

53. **Issue No.4**

In the light of the findings recorded while discussing the Issue No.1, 2 and 3, now the question arises as to what relief the 42 workers who have been held to be in employment of Management of SECL and their disengagement is legally unjustified

54. According to the learned Counsel for Management, their reinstatement and regularization will not be justifiable keeping in view the facts that firstly the litigants has continued for about 25 years, hence most of the workmen would have crossed the age of superannuation and secondly they cannot be regularized as they were not in service, when the reference was made to the dispute. Learned Counsel for Management has again placed reliance on case of Oshiyar Prasad (Supra). Inthe said case of Oshiyar Prasad, the workmen were held entitled to retrenchment compensation.

55. The settled proposition of law is that when the disengagement of the workmen is found violative of Section 25(G) of Industrial Dispute Act,1947 or when it is found that a workman has been retrenched against law , he has to be either reinstated with or without back wages or be given compensation in lump sum as his claim. In the case in hand also the disengagement/retrenchment of the 42 workmen has been held legally unjustified, hence these 42 workmen have the right to be reinstated with or without back wages and service benefits life absorption/regularization etc. or lump sum compensation in lieu of their rights to be paid to them . In the case in hand the dispute first started in 1993 and has taken around 26 years to be decided. Since now many workmen have crossed the age of superannuation, financial condition as well as availability of the work with the employer company is also to be looked into . Hence keeping in view the facts of the case in hand the ends of justice will be served if a lump sum compensation in lieu of wages after re-instatement , right to regularization and other consequential service benefits be granted to them. In the light of the

facts and circumstances of the case in hand , lump sum compensation of Rs. 2 lacs (Rs.2,00,000/-) to each of the 42 workman will meet the ends of justice. Keeping in view the period litigation and its chequered history workman union also deserves to be paid the cost of litigation.

Issue No.4 is answered accordingly.

Accordingly the award is passed as follows:-

A. The action of of SECL in disengaging the 42 and not regulalrising them is held unjustified in law and fact.

B. The aforesaid 42 workers are held entitled to get Rs. 2 lac (Rs. 2,00,000/-) per person as lump sum compensation in adjustment of their rights.

C. The cost of the litigation Rs. 50,000/-(Fifty thousand only) will also be paid by Management of SECL to the workmen/Union.

56. Let the copies of the award be sent to the Government of India, Ministry of Labor & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

Date: 21.10.2019

नई दिल्ली, 20 नवम्बर, 2019

का.आ. 2034.–औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 65/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.11.2019 को प्राप्त हुआ था।

[सं. एल–22012/16/2008–आईआर (सीएम-II)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 20th November, 2019

S.O. 2034.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 65/2008*)* of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of M/s. S.E.C.L and their workmen, received by the Central Government on 19.11.2019.

[No. L-22012/16/2008-IR(CM-II)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/65/2008

The Secretary
Janta Mazdoor Sangh
B-3/6, Store Complex, Amradandi
Amlai, Shahdol …Workman/Union

Versus

The Chief General Manager,
Sohagpur Area,
SECL, PO:Dhanpuri,
Shahdol …Management

AWARD

(Passed on this 18th day of October,2019.)

1. As per letter dated 3-6-2008 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/16/2008-IR(CM-II). The dispute under reference relates to:

"Whether the action of the Management of M/s. SECL in imposing penalty of stoppage of one increment with cumulative effect on Shri Mukul Singh is legal and justified? To what relief is the workman entitled?"

2. After registering a case on the basis of reference, notices were issued to the parties.

3. The case put up by workman in his statement of claim is that he was initially employed with the management and while posted at Dhanpuri OCM Suhagpur area as Foreman In charge he was issued a charge-sheet alleging that LW50 Toner Dumper, Serial No.2604 was under break down from previous shift as its parking break was not operating. It was further alleged that the workman, along with late Mushtaq Ali started repairing of the parking brake of the aforesaid dumper in second shift on 14-11-99 without any consultation of Engineer-In charge and while repairing, the engine of the dumper was on, causing movement of the dumper and hitting late Mushtaq Ali who sustained fatal injuries.

4. The workman as alleged in statement of claim replied the charge and the disciplinary inquiry was initiated against him. It is the case of the workman that the inquiry officer did not conduct inquiry according to the settled principles of law and with fairness, wrongly held the charges proved against the workman. Also, it has been alleged that no copy of the inquiry report was supplied to the workman. He was not given opportunity to put his case and sentence was passed without hearing which is arbitrary and excessive. Accordingly, the workman has prayed for setting aside of sentence holding the inquiry illegal and charges not found.

5. According to the case of the management put in written statement of defence, the inquiry was conducted keeping in view the settled principles of law and natural Justice, giving the workman opportunity to participate in the inquiry and the workman did participate in the inquiry, he cross-examined witnesses, produced his own witnesses and filed written arguments. The inquiry officer held the charges proved and submitted the inquiry report which was considered by the disciplinary authority and sentence of stoppage of one increment with cumulative effect with confirmation of suspension period as well recording of his punishment in the service book was passed taking lenient view. Accordingly it has been prayed that reference be answered against the workman.

6. Following preliminary issue was framed by my learned predecessor on the basis of pleadings:-

"Whether the departmental inquiry conducted was legal and proper or not?"

After considering the evidence on record**,** my learned predecessor held that the departmental inquiry was legally and properly conducted vide his order dated 29-11-2016. It is to further mention here that the workman absented during the hearing and did not produce evidence on preliminary issue, whereas the management filed documentary evidence and proved which are inquiry papers from M1 to M4. The said order of this preliminary issue is part of the order.

7. Thereafter following additional issues were framed by my learned predecessor vide his order dated on 29-11-2016:-

1. **Whether the alleged misconduct is proved from the evidence in inquiry proceedings.**
2. **Whether the punishment imposed against the workman is proper and illegal.**
3. **To what relief the workman is entitled.**

Parties were given opportunities to lead their evidence on these issues but no evidence was filed by any of the parties. At the time of arguments the workman absented himself hence arguments of learned counsel for management was heard and record has been perused by me.

Additional issue No.1

Management has filed and proved documentary evidence regarding domestic inquiry which is the office memo instituting the inquiry, inquiry proceedings, Inquiry report, and punishment order. From the proceedings of the inquiry report and statement of witness recorded during inquiry there is no occasion to disagree with the conclusion of the inquiry officer that the charge of misconduct were proved against the workman, hence holding that charge of misconduct as leveled against workman is proved, this additional issue is decided against the workman.

Additional Issue No. 2.

The impugned punishment awarded for the charge of misconduct in the form of negligent handling of the machine resulting into death of co-worker was the stoppage of one increment with cumulative effect, by no stretch of imagination this punishment can be said to be disproportionately excessive hence holding that the impugned punishment for the charges is not shockingly inappropriate. I ssue No.2 is decided against the workman.

Additional Issue No. 3.

In the light of findings recorded above, the workman is held entitled to no relief.

8 **In the light of the findings recorded above following award is passed:-**

A. Action of management of M/s. SECL in imposing penalty of stoppage of one increment with cumulative effect on the workman Mukul Singh is held legal and justified.

B. workman is held entitled to no relief.

9. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

Dated:18-10-2019

नई दिल्ली, 20 नवम्बर, 2019

का.आ. 2035.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 21/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.11.2019 को प्राप्त हुआ था।

[सं. एल–22012/108/2015–आईआर (सीएम-II)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 20th November, 2019

S.O. 2035.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/2016) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of M/s W.C.L and their workmen, received by the Central Government on 19.11.2019.

[No. L-22012/108/2015-IR(CM-II)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/21/2016

Shri Md.Naseem Siddiqui,
Jonal Mahamantri
Coal Mines Engineering Workers Association
Ward No.10, Gudhi Pala Chouri
Chhindwara-480551 …Workman/Union

Versus

The Manager
WCL, Mohan Collery, Kanhan Area
P.O. Ambara,
Tehsil Junnarde
Chhindwara-480551 …Management

AWARD

(Passed on this 18th day of October, 2019)

1. As per letter dated 4/2/2016 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/108/2015-IR(CM-II). The dispute under reference relates to:

''क्या प्रबंधक, मोहन कॉलरी वेस्टर्न कोलफील्ड लिमिटेड, कान्हान क्षेत्र, पोस्ट अंबाड़ा, तहसील जन्नारदेव जिला छिंदवाड़ा (मध्य प्रदेश) द्वारा एलसीडब्ल्यूए–II के प्रावधान 10.4.4 व एलसीडब्ल्यूए–III के प्रावधानप 9.4.4 के अनुसार दिनांक 31.12.2011 को सेवानिवृत्त हुए पूर्व कामगार श्री वशिष्ठ, पिता चन्दन, के आश्रित पुत्र श्री संदीप को रोजगार न देना न्यायसंगत है ? यदि नहीं तो कामगार क्या अनुतोष पाने का अधिकारी है?''

2. After registering a case on the basis of reference, notices were sent to the parties.

3. According to the statement of claim of workman, he was working as an employee with the Management since last 35 years and retired after satisfactory service on 1.1.2012. The NCWA-II to III provides for employment of one dependent of such an employee which was refused in the case of the present workman inspite of several representations, details mentioned in the claim. A dispute was raised from the workman side before Labour Commissioner who sent a report regarding failure of conciliation to the Government and thereafter the reference has been sent by the appropriate Government for award. The workman side has prayed that award be passed directing the management to offer employment to the dependent of the retired workman in the light of the agreements and provisions mentioned as above.

4. The case of management in their statement of defence is that the workman Vashisht who is the father of claimant was working with Kanhan area of WCL and retired from service after attaining the age of 60 years. It was further denied by the management that as per the circular any dependent of a retired workman is entitled to employment. Accordingly it has been prayed that the reference be answered in negative.

5. During the course of hearing, the workman side absented itself, hence the case proceeded ex-parte against the workman vide order dated 24-6-19.

6. Management has filed affidavit of its witness Manoj Tripathi. None was present from the side of workman to cross-examine management witness, hence opportunity of cross examination was closed.

7. The reference is the point of determination in the present case.

8. The burden to prove the case lies on the workman. No evidence in the form of any affidavit has been filed from the side of workman nor has any document been proved. On the other hand management witness has proved its case as stated above in his affidavit.

9. Learned counsel for management has relied on case and prior in relation of management of BCCL Dhanbad Vs, CGIT Dhanbad, Writ Petition(L) No.2412/2002 wherein such practice of giving preference in the matter of public employment to a person on the ground that his parent has been employee has been held contrary to Article 16 of Constitution of India and has been held discriminatory.

10. In the light of principle of law laid down in the case referred above, keeping in view the facts of the case in hand the reference deserves to be answered against the workman.

11. The Award is passed as follows:-

A. **Accordingly holding the action of Manager of Mohan Colliery WCL, Kanhan area in refusing employment to the dependent of retired employee Vashisht is justified in law.**

B. **The claimant is held entitled to no relief.**

The reference is answered accordingly.

12. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SHRIVASTAVA, Presiding Officer

नई दिल्ली, 20 नवम्बर, 2019

का.आ. 2036.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स डब्ल्यू.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 19/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19.11.2019 को प्राप्त हुआ था।

[सं. एल–22012/75/2010–आईआर (सीएम-II)]

एस. सी. राय, अनुभाग अधिकारी

New Delhi, the 20th November, 2019

S.O. 2036.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2011*)* of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the management of M/s. W.C.L and their workmen, received by the Central Government on 19/11/2019.

[No. L-22012/75/2010-IR(CM-II)]

S. C. RAY, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/19/2011

Shri Bharat Singh
General Secretary
Sanuket Colya Mazdoor Sang(ATAC)
EKKLHAR
CHHINDWARA …Workman/Union

Versus

The Chief Manager,
WCL Pach Area,
CHHINDWARA …Management

AWARD

(Passed on this 17th day of October, 2019.)

1. As per letter dated 28-3-2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No. L-22012/75/2010-IR(CM-II). The dispute under reference relates to:

2. **क्या प्रबंधन द्वारा स्वर्गीय कामगार हेमराज के आश्रित श्री शैलेन्द्र की मृत्यु हो जाने के फलस्वरूप द्वितीय आश्रित पुत्र श्री महेंद्र को अनुकम्पा नियुक्ति न प्रदान किया जाना उचित है ? यदि नहीं, तो स्व. कामगार के आश्रित पुत्र क्या संतोष पाने के अधिकारी है ?**

3. After registering the case on the basis of reference, notices were sent to the parties.

4. The Union, appearing on behalf of the applicant/workman alleged in its statement of claim that the father of the applicant was working with the management as fitter token no.966 in Thesgora Mines. He died on 29.6.1998. His dependent son Shailendra Kumar had filed application on compassionate ground which was under process but during processing of the said application he also died on 20-5-2009 hence the present applicant Mahendra who is the second son of deceased workman filed his application for compassionate appointment as per rules along with all required documents on 15-7-2009 but the management refused to employ him on compassionate ground. A dispute was raised with the Labour Commissioner. He sent a report regarding failure of reconciliation hence the reference was made by the appropriate government to this Court. The applicant has accordingly prayed for a direction to management to appoint him on compassionate ground consequent to the death of his father Hemraj, during employment of Management.

5. The case of management as stated in its written statement of defence is that firstly, the first son filed application for compassionate appointment after 8years of death of deceased workman and the present applicant filed his application after 11 years which is highly delayed. It was further alleged that the deceased workman had two wives and none of them came forward for monetary benefits which shows that they are not in distress. The Management has admitted that the worker Hemraj died during employment. The management further admits that the application of the first son was processed for compassionate appointment and before decision could be taken the first son of deceased workman also died. Also it is admitted that as **per clause no.9.4 of NCWA provides for employment to dependent of an employee who dies in course of or arising out of employment which is in addition to monetary compensation given to the female dependents of the deceased employees.** At the stage of evidence the applicant examined himself on oath and

was cross examined by Management. Management examined its witness Hirkok Sarkar, Senior Personnel Manager who was cross examined by applicant. The workman filed and proved office order dated 29-8-98 striking the name of workman late Hemraj on the ground of his death and certificate of deceased workman which are exhibit W-1 and W-2. The Management filed and proved circular dated 7.12.2001 and letter dated 13-3-2010 which is Exhibit M-2 and M-3. The management also filed death certificate of deceased workman which is admitted by applicant this document is exhibit M-1.

6. I have heard arguments of Shri Mahendra Chaterjee on behalf of applicant(Union representative) and Shri A.K.Shashi, learned counsel for Management and also perused the record**.**

7. The reference is the point for determination for the case in hand.

8. Admitted is the fact between the parties that Hemraj was under employment of the management and died in course of employment on 29.6.1998. This is also admitted between the parties that the deceased workman had two wives. The fact that first applicant Shailendra died during pendency of his application for compassionate appointment consequent to death of his father Hemraj is not disputed by the Management. It is also not disputed by the Management that first applicant Shailendra died on 20-5-2009 and also the fact that the present applicant did file his application for compassionate appointment on 15-7-2009 . The Management does not dispute the claim of the present applicant that he is the son of the deceased workman.

9. Rule 9.4 of NCWA which is binding between the parties provides that "**one dependent of permanent employee who died or became permanently disabled during the course of his appointment shall be given compassionate employment, this provision further provides that the condition for compassionate employment will be that the person claimed will be the son/daughter or spouse of the deceased workman and further that he must be dependent on the deceased workman also and that he is physically fit for employment and is below 35 yrs of age, if he is claiming as son or daughter of the deceased workman".** These rules do not provide for any time limit for filing application for compassionate appointment.

10. The case of Management is that the claim of compassionate appointment was preferred after more than 10 years from the date of death of the deceased. It is alleged on behalf of the applicant workman and is proved by its witness that first there was an issue between the two wives of the deceased and after it was settled the eldest son moved application for compassionate appointment. It is no where the case of the management nor is in the statement of management that the claim of the eldest son was refused on the ground of inordinate delay rather it is established from the evidence on record that the application was filed in the year 2006 remained pending till June-2009 that is a period of 3 years with the Management. It is also proved from the statement of the applicant that the present applicant filed his application for compassionate appointment within a month of death of his elder brother whose application was pending since last 3 years. So in the light of the above proved facts and circumstance no delay can be attributed on the part of the present applicant in putting his claim for compassionate appointment moreover NCWA does not provide any time limit**.** Hence, in the light of above findings, the stand of management that the application for compassionate appointment was filed with a delay and is liable to be rejected as it does not hold merit and is rejected.

11. On the basis of above findings, the action of Chief General Manager, WCA, Pench area in not giving compassionate appointment to the present applicant in this case is held unjustified in law and the present applicant is held entitled to compassionate appointment as per rules as dependent son of deceased workman Hemraj.

12. **Accordingly the award is passed as follows:-**

A. Action of management of M/s WCL in not providing employment to Shri Mahendra who claims to be second son of deceased workman Shri Hemraj is held illlegal and unjustified.

B. The present applicant(Shri Mahendra) is held entitled to compassionate appointment as per rules as dependent son of deceased workman Hemraj.

12. Let the copies of the award be sent to the Government of India,Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 20 नवम्बर, 2019

का.आ. 2037.–औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोचीन पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औघोगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, ईरनाकुलम के पंचाट (संदर्भ सं. 5/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.11.2019 को प्राप्त हुआ था।

[सं. एल–35011/02/2015–आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 20th November, 2019

S.O. 2037.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 5/2016*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* ERNAKULAM as shown in the Annexure, in the industrial dispute between the management of *Cochin Port Trust,* and their workmen, received by the Central Government on 20.11.2019.

[No. L-35011/02/2015-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT, ERNAKULUM

Present: Shri. V. Vijaya Kumar, B. Sc, LLM, Presiding Officer

(Friday the 8th day of November 2019, 17 Kartika 1941)

ID No. 5/2016

Workman/Unions : 1. The General Secretary
Cochin Port Employees Organisation
Willingdon Island
Kochi- 682009

By Adv.Ashok M.Cherian

2. The General Secretary
Cochin Port Staff Association
Willingdon Island
Kochi- 682009

By Adv. C.A.Majeed

Managements : 1. The Chairman
Cochin Port Trust
Willingdon Island
Kochi- 682009

2. The Deputy Conservator
Cochin Port Trust
Willingdon Island
Kochi- 682009

3. The Chief Medical Officer
Cochin Port Trust
Willingdon Island
Kochi- 682009

By Shri.B.S.Krishna Associates

This case coming up for final hearing on 19-9-2019 and this Tribunal-cum-Labour Court on 08-11-2019 passed the following:

AWARD

1. In exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (Act 14 of 1947) the Government of India, Ministry of Labour by its order No. L-35011/02/2015-IR(B-II) dt. 05.01.2016 referred the following dispute for adjudication by this Tribunal.

2. The dispute referred is;

> "Whether the action of the Port Trust management in revising the washing reimbursement as per the wage revision settlement dt.02.08.2000 and 19.01.2010 is justifiable ? If not to what relief they are entitled ? "

3. After receipt of the reference, summons were issued to all the parties. All the parties entered appearance and unions no.1 and 2 filed their claim statements. The management also filed written statement against the separate claim statement filed by the unions. From 26.12.2018 onwards the unions remained absent. Hence the management is heard on the reference received from the Government. According to the claim filed by both the unions the hospital staff and fire brigade employees are entitled to special washing allowance from the Wage Revision Settlement dt.19.01.2010.

4. The management filed written statement alleging that the unions raised the present industrial dispute without any bonafide and there is no merit in the claim. According to the management the wage revision settlement dt.06.12.1994 was implemented w.e.f. 01.01.1993 for a period of 5 years. The washing reimbursement and special washing reimbursement prevalent at that point of time enhanced from Rs.18/- and Rs.36/- per month to Rs.22/- and Rs.45/- per month respectively. Washing reimbursement and special washing reimbursement are part of pay structure and is increased automatically on implement of wage revision. On the request of the union special washing allowance to hospital and fire brigade was introduced w.e.f. 01.01.1998. This was implemented vide order dt.12.06.2002. In Clause 15 of Wage Revision settlement dt.19.01.2010 there is a provision that washing allowance in respect of hospital and fire brigade staff who have been receiving such allowance will be discussed and settled locally. In the meeting held on 01.10.2012 it was decided to enhance the washing allowance to 40% w.e.f. 01.01.2010 instead of 01.01.2007. The same was agreed by the unions. The order was approved by the board of trustees on 28.03.2013. The enhancement of special washing allowance in respect of hospital and fire brigade staff were done on the basis of the decision taken in the settlement dt.19.01.2010. Since unions were party to the above decisions they are estopped from contenting otherwise. The pay and allowance of the employees were revised w.e.f. 01.01.2012 by settlement dt.25.10.2013. Since the washing reimbursement and special washing reimbursement in the above settlement were not applicable to hospital staff, fire brigade and sanitary staff, they were discussed separately and it was decided to extend the benefit to them.

5. According to the counsel for the management the same issue was raised by unions in Industrial Dispute no.42/2014 and by Award dt.17.02.2017 this Tribunal found that the unions are entitled for the relief claimed by them and directed the management to grant the workmen in hospital and fire brigade department at 100% w.e.f. 01.01.2007 instead of 40% and also directed to pay the arrears in three equal installments. The management implemented the Award vide its order dt.18.07.2017. The management also communicated the implementation of the Award to Assistant Provident Fund Commissioner (Central) vide its letter dt. 04.10.2018. On a perusal of the Award in Industrial Dispute no. 42/2017 it is seen that this Tribunal has granted the relief claimed by the hospital and fire brigade staff enhancing washing allowance at 100% w.e.f. 01.01.2007 instead of 40%. It is also seen that vide order dt.18.07.2017 the management has already implemented the same. Probably that is the reason why the Unions remained absent in these proceedings. In view of the above nothing remains to be adjudicated in this reference.

Hence an Award is passed holding that the Port Trust management has already revised the washing allowance reimbursement as per the Award issued by this Tribunal in Industrial Dispute no.42/2014 and nothing remains to be adjudicated in this reference.

The award will come into force one month after its publication in the official Gazette.

Dictated to the Personal Assistant, transcribed and passed by me on this the 8 th day of November, 2019.

V. VIJAYA KUMAR, Presiding Officer

APPENDIX

Witness for the workman	-	Nil
Witness for the Management	-	Nil
Exhibits for the workman	-	Nil
Exhibits for the Management	-	Nil

नई दिल्ली, 20 नवम्बर, 2019

का.आ. 2038.–औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ महाराष्ट्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ सं. 8/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.11.2019 को प्राप्त हुआ था।

[सं. एल–12011/117/2008–आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 20th November, 2019

S.O. 2038.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 8/2009) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of Bank of Maharashtra, and their workmen, received by the Central Government on 20.11.2019.

[No. L-12011/117/2008-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M. V. Deshpande, Presiding Officer

REFERENCE NO.CGIT-2/8 of 2009

EMPLOYERS IN RELATION TO THE MANAGEMENT OF BANK OF MAHARASHTRA

The Deputy General Manager,
Bank of Maharashtra, Mumbai City Region,
Mumbai Samachar Marg, Fort,
Mumbai – 400 023.

AND

THEIR WORKMEN

The Joint Secretary,
Bank of Maharashtra Employees Union,
45-47, Mumbai Samachar Marg
Mumbai – 400 023.

APPEARANCES:

FOR THE EMPLOYER : Mr. M. B. Anchan, Advocate

FOR THE WORKMEN : Mr. V.J. Amberkar, Advocate

Mumbai, dated the 11th October, 2019

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-12011/117/2008 – IR (B-II) dated 05.02.2009. The terms of reference given in the schedule are as follows :

> "*Whether the action of the management of Bank of Maharashtra, Mumbai Regional Office, Mumbai by terminating the services of Shri Janardhan Dhode is justified ? What relief the workman, Shri Janardhan Dhode is entitled to ?''*

2. After the receipt of the reference, both the parties were served with the notices.

3. The concerned workmen filed statement of claim Ex.16. According to the concerned workman he was employed by the first party on 3.1.05 as part time Sweeper. He worked continuously at Delisle Road branch during his employment tenure till 10.3.07. He was recommended through Employment Exchange and his name was recommended by Chief Manager [Administration] of the first party by its letter dt. 29.10.04. Details of his employment were furnished to the branch by the first party. The first party issued letter to the concerned workman and called him for the interview and after his interview the concerned workman was asked to work at Delisle Road branch by the first party. By its letter dt. 1.1.05 the first party appointed him at his Delisle Road branch for the period from 3.1.05 to 8.1.05. Thereafter by letter dt. 10.1.05 his period of work was extended from 10.1.05 to 1.2.05. Again by its letter dt. 10.2.05 the first party extended the employment period of the concerned workman from 10.2.05 to 1.3.05. Again first party extended the employment period of the concerned workman from 10.3.05 to 9.4.05. By letter dt. 10.4.05 the first party again extended the employment period of the concerned workman from 10.4.05 to 7.5.05. Again it was extended for the period from 12.5.05 to 11.6.05. However, he was posted at the permanent vacant post and he had worked in Jan. '05 and in the year 2006. However, his services came to be terminated on 9.3.07.

4. It is thus case of the concerned workman that he worked for more than 240 days in the year from 2005 to 2006. His services came to be terminated illegally. Therefore he lodged a complaint in the office of RLC Mumbai by its letter dt. 13.11.07. Conciliation failed, hence this reference.

5. The concerned workman is therefore asking for declaration to the effect that his employment by the first party was on vacant permanent post of Sweeper and that he has worked for more than 240 days in the year 2005 and 2006 before termination of service on 9.3.07. He is therefore asking for reinstatement in service with full back wages and continuity of service w.e.f. 9.3.07 till he is allowed to resume his duty by the first party.

6. First party by filing written statement Ex.9 resisted the claim contending therein that the concerned workman was initially appointed as part time Sweeper on temporary basis w.e.f. 3.1.05. His appointment was purely on temporary basis on 1/3rd scale of wages and that the last letter of appointment is dt. 12.5.05. His services were continued till 9.3.05. As per letter dt. 12.5.05 his services came to be terminated w.e.f. 11.6.05.

7. It is also the case of the first party that in response to the information called from all the branches in the Region, Delisle Road branch informed the name of the concerned workman who was working as temporary PTS at their branch. He was one of the 4 wait listed candidates sponsored by the Employment Exchange in the list provided by the Regional Office for appointment on temporary basis. The bank manager issued call letter to him and subsequently he had been issued temporary appointment letter. The name of the concerned workman has been appearing on the muster roll of the branch since Jan. '05. He has been paid salary from time to time.

8. It is thus case of the first party that the concerned workman Mr. Dhode is not fulfilling the requisite conditions for recruitment. His date of birth is 29.6.70. He was studying in 4th Std. from 5.5.84 as per school leaving certificate dt. 14.3.88. His caste is S.T. Thus as on date of initial appointment i.e. on 3.1.05 he was apparently not satisfying the age as well as qualification criteria stipulated for selection as part time sub staff which is pre-requisite for qualifying for the selection process as per the Central office communication dt. 15.5.06. Since he was not fulfilling the condition laid down for the recruitment his services have been discontinued from 10.3.07. As such he is not entitled to be continued as par time sweeper. As such action of the first party is legal. It has thus sought dismissal of reference.

9. Following issues are framed at Ex.20. I reproduce the issues along with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1	Whether the action of the management by terminating the services of Shri Janardhan Dhode is justified ?	Yes
2.	If not, whether the workman is entitled to be reinstated in service with full back-wages and continuity of service as prayed for?	No
3.	What Order ?	As per final order

Reasons

Issue No.1 to 3:-

10. The concerned workman in his cross examination has admitted that he was appointed as part time sweeper on temporary basis from 3.1.05 and that his last appointment letter is dt. 12.5.05. On going through the appointment letter dt. 1.1.05, it is clear that he was appointed as part time sweeper from 3.1.05 to 8.1.05 i.e. only for six days. It is mentioned in this appointment letter that his services would come to an end on 8.1.05 automatically by efflux of time. It is also mentioned in the letter that his appointment is purely on temporary basis and the concerned workman has no right to claim appointment on permanent post as Peon.

11. Similarly, the letters were issued to the concerned workman on 10.1.05, 10.2.05 mentioning therein that his appointment was purely on temporary basis as a sweeper for the particular period and that he will not be entitled to claim any right to the post of Peon. In both these letters it is also mentioned that his appointment would automatically come to an end after efflux of time. That would show that the concerned workman was appointed purely on temporary basis as a part time sweeper for the particular period mentioned in the letters. It cannot be said therefore that he worked continuously.

12. It is no doubt true that he was continued in service till 9.3.07. For, it is explicit, from the evidence of Mr. Atul Joshi that as per the guidelines issued by the Central office of the bank vide circular dt. 15.5.06 the candidates sponsored by the Employment Exchange who had responded to or will respond to the advertisement released by the bank are to be considered for the selection process provided they were fulfilling all laid down norms at the time of their initial employment in the bank on temporary basis after considering their age, educational qualifications etc. and should be within the norms prescribed for the appointment of PTS on the day they were for the first time appointed temporarily in the bank. The selection process was carried out. The information was called from all the branches in the region. Delisle Road branch informed the name of concerned workman Mr. Dhode who was working as temporary PTS at their branch. He was one of the 4 wait listed candidates sponsored by the Employment Exchange in the list provided by the Regional Office for appointment on temporary basis. His name was also appearing in the muster roll since Jan. '05. Therefore he was short listed.

13. It is clear from the record that even though he was short listed it was found that he was not fulfilling the requisite conditions for recruitment. His date of birth is 29.6.70. He was studying in 4th Std. from 5.5.84 as per school leaving certificate dt. 14.3.88. So on the date of appointment as temporary sweeper i.e. on 3.1.05 he was not satisfying the age as well as qualification criteria stipulated for the selection as part time sub-staff which is pre-requisite qualification for the selection process as per the Central office communication dt. 15.5.06. This is precisely reason for discontinuation of his services and therefore his services have been discontinued w.e.f. 10.3.07 on the ground that he was not satisfying the age as well as qualification criteria stipulated for the selection as part time sub-staff. If that is the case that he was not having requisite qualification for selection as a part time sub-staff, his services have been discontinued. In view of that it cannot be said that action of the management in terminating his services on account of his disqualification is unjustified.

14. Even then the Learned counsel for the concerned workman submitted that he was appointed on permanent post and therefore it was mandatory for the management to comply the provisions of section 25 F of I.D. Act.

15. This submission is not acceptable since there is no evidence that he worked continuously without any break for more than 240 days. In the appointment letter itself, it is specifically mentioned that his appointment was purely on temporary basis for particular period and on expiry of that period his services will automatically come to an end and that

he is not entitled to claim permanency. In view of appointment letters, in view of service records which is placed on record by the concerned workman, it is clear that he was not having requisite qualifications as regards his age & educational qualifications and therefore he is not entitled to continue w.e.f. 10.3.07. As such he is also not entitled to be reinstated in service with full back wages and continuity of service. Hence the above issues are therefore answered accordingly as indicated against each of them in terms of above observations.

16. In view of my finding to the above issues, I pass the following order.

ORDER

Reference is rejected with no order as to costs.

Date: 11.10.2019

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 20 नवम्बर, 2019

का.आ. 2039.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 07/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.11.2019 को प्राप्त हुआ था।

[सं. एल–12011/37/2015–आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 20th November, 2019

S.O. 2039.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 07/2016) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of Union Bank of India, and their workmen, received by the Central Government on 20.11.2019.

[No. L-12011/37/2015-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, BHUBANESWAR

Industrial Dispute Case No.07 of 2016

Dated of passing of the award 16.09.2019

Present: Shri B.C. Rath, LL.B., Presiding Officer,
Central Government Industrial Tribunal,
Bhubaneswar.

Between:

The Management of Union Bank of India, Represented by :
The Deputy General Manager,
Union Bank of India,
Nodal Regional Office,
3/1 A Civic Centre IRC Village,
Nayapally,Bhubaneswar-751015. … 1st Party Management

-Versus-

The General Secretary
All Odisha Union Bank Employees Association
C/o Union Bank of India,
38, Ashok Nagar, Bhubaneswar 751009. …2n Party Workmen

Appearances:-

For the First Party Management : Sri S.K. Mohapatra

For the 2nd Party workman : Sri S.K. Mohanty

AWARD

The Government of India, Ministry of Labour and Employment have referred an Industrial Dispute between the above named parties for its adjudication vide its order No. L-12011/37/2015-IR(B-II) dated.11.01.2016 in exercising its authority conferred under Clause (d) of sub-section(1) and sub-section(2-A) of Section 10 of the Industrial Disputes Act,1947(14 of 1947) and the Schedule of the reference is as follows:-

> "Whether the action of the Management of Union Bank of India, Bhubaneswar in abolition of permanent posts of Armed Guards and outsourcing the same violates the provisions of bipartite settlement and if the action is legal and justified ? If not , what relief the said Union is entitled to?"

2. The case of the 2nd Party Union, in nutshell, is that there was a bi-partite settlement eighth in number on 2nd June, 2005 between Indian Banks Association representing the employer Banks and the Banks' Employees Federation of India and four other Unions representing the workmen Union i.e. the employees working in Banks. The 2nd party Union being affiliated to the Banks Employees Federation was a party to the said settlement so also the 1st Party Management Bank being represented by Indian Banks Association. As per the Clause 31(h) of the said settlement it was agreed that the Management Banks shall endeavour to retain re- skilled staff and develop in- house competency. If it is required they may outsource I.T. and Its related activities in respect of specialised area where in- house capability I.T. sector is not available. It is the claim of the 2nd Party Union that two other bi-partite settlements have been entered into between the Indian Banks Association and the Bank Employees Federation after the 8th Bi Party settlement and the terms and conditions of clause 31(h) of the 8th bi- partite settlement remains untouched in other two settlements . In that view of the matter the Management Bank can outsource only I.T. and its related activities in specialised area where in- house capability is not available and as per the terms of 8th bi-partite settlement the Management Bank has no authority whatsoever to outsource any other activities of the Bank except I.T. and its related activities. According to the 2nd. Party Union protection of customers money and valuable in the branches of the Management Bank is the primary job of the Armed Guards permanently employed in the Bank and they have been performing the said job without any blemish. The Management also informed the National Deputy Chairman of the National Ex Serviceman Coordination Committee vide their letter No.SCC DR 361 dated.3rd. Feb.2014 that they were outsourcing Armed Guards only for temporary phase to meet the contingency of posting Guards in vulnerable branches. Despite such prohibition of outsourcing the job of Armed Guards and the stand put forth by the Management Bank before the National Ex Service Man Coordination Committee the Ist Party Management released an advertisement in the news paper "Times of India" and local news paper "Prameya" in their publications of 24th July,2014 inviting tender for out- sourcing Armed Guards for their deployment in various branches of the Bank at Odisha. It has been claimed by the 2nd Party Union that such action and conduct of the Management Bank making advertisement for out- sourcing of Armed Guards is a clear violation of terms and conditions of valid settlement between the parties and the act is an unfair labour practice . Such advertisement was made without taking the 2nd party Union into confidence as well as complying the requirement of Sec.9(A) of the I.T. Act which mandates a prior notice before any change of service condition of the workmen. By introducing such outsourcing of Armed Guards the Management Bank has interfered in the service conditions of its employees also. Hence the 2nd party Union raised a dispute before the Labour Machinery challenging such action of the Management. When the conciliation initiated by the Labour Machinery was failed, the dispute has been referred for its judicial adjudication as mentioned earlier.

3. Being noticed the 1st Party Management has filed its written statement and resisted the claim of the 2nd Party Union taking a stand that the reference is not maintainable in the eye of law since the issue raised by the Union is not an "Industrial Dispute" as defined in Sec.2(k) of the Act. The question of outsourcing a particular job is within the managerial discretion of an employer to organise and arrange his business in the manner which he considers best. Further more, the outsourcing of Armed Guards being a temporary phenomena due to certain exigency it does not affect the service conditions of the employees of the Management Bank in any manner. According to the Management the terms and conditions of various bi- partite settlement do not specifically prohibit the Management specifically to take assistance for outsource in day to day business and affairs of the Bank more particularly in urgent circumstances . It has been contended on behalf of the Management that there is no specific bar in the bi-partite settlement of 2005 for taking assistance of outsource for day to day smooth functioning of the Banks. Keeping the larger interest of the public in view the Management Bank has to adopt and frame policies within the frame work of guide lines issued by the Reserve Bank of India from time to time for smooth running of its branches . Thus the Management Bank has opted for outsourcing of Armed Guards within the guidelines of the Reserve Bank of India to meet the urgency of the situation as there is a large number of regular vacancies in the post of such Armed Guards. The advertisement inviting the tender for outsourcing of Armed Guards is a temporary phenomena and no action has been taken by the Management either to reduce or abolish the posts of Armed Guards. The Management Bank has not violated any provisions of the Bi-party settlement in as much as there is no clause in the said settlement prohibiting the Management to outsource other activities besides I.T and its related services. The outsourcing of Armed Guards is done to meet the urgent need of posting of such Guards in vulnerable branches as a temporary measure. By such outsourcing service conditions of any

workmen of the Management Bank is not going to be affected. Hence a prayer has been made for rejecting the statement of claim of the Union.

4. On the aforesaid pleadings of the parties the following issues have been settled for adjudication of the dispute.

ISSUES

(1) Whether the dispute is maintainable ?

(2) Whether the action of the Management in abolition of permanent posts of Armed Guards and releasing of advertisement for outsourcing the same violates the provisions of bi-partite settlement is legal and justified?

(3) If, not what relief the 2nd Party Union is entitled to ?

5. Both the parties have examined one witness each. Besides , the 2nd Party Union has relied upon documents like copy of bi-partite settlement dated.2.6.2005, Copy of bi-partite settlement dated.27.4.2010, Copy of bi-partite settlement dated.25.5.2015,Copy of the letter dated.03.02.2014,Copy of news paper clipping dated in the news paper " The Prameya" dated.24.07.2014, Xerox Copy of the Advertisement No.1/2016-17 for recruitment of Armed Security Guard in RBI, Xerox Copy of the Advertisement inviting application for recruitment of Armed Guards. Management Issues of 05.06.2017 on next wage revision negotiations with workmen Union/Officers Associations which are marked as Ext.1 to 7 . The Management has also filed documents like(1) Photo copy of the Guidelines/circulars of Reserved Bank of India dated.03.11.2006, Photo copy of the outsourcing policy dated.11.05.2012 of the Management Bank, Photo copy of the letter dated.18.06.2013 giving detailed guideline for procedure to be followed while outsourcing of security guards in line with the direction and guidelines issued by RBI which are marked as Ext.A to Ext.C .

6. For the sake of convenience all the issues are taken into consideration simultaneously.

The 1st. Issue raised by the Management is that the dispute raised by the 2nd party Union is not an Industrial Dispute as defined under section 2(k) of the Act. The Act defines "Industrial Disputes" means any dispute or difference between employers and employers, or between employers and workmen or between workmen and workmen which is connected with the employment or non employment or the terms of the appointment or with the conditions of labour, of any person. As per the settled principle an Industrial Dispute can arrive within the meaning of Section 2(k) only when there is a demand by the workmen and a denial of the same by the Management. It is one thing to say that there must be an existence of a dispute or difference so as to clothe the appropriate Government with the jurisdiction to refer the matter for adjudication exercising its authority under Sec.10 of the Act. In the case between Shambu Nath Goyal -Versus- Bank of Baroda reported in 1978-1 I.L.J page 484 SC. The Honble Apex Court have set out that no where the Act contemplates that the dispute would come into existence in any particular, specific or prescribed manner. For coming into existence of an industrial dispute a written demand is not a sine qua non. It has been further observed by the Hon'ble Apex Court that the term Industrial dispute connotes a real and substantial difference having some element of persistency and continuity till resolved and likely if not adjusted to endanger the industrial peace of the undertaking or the community. When parties are at variance and the dispute or difference is connected with the conditions of labour there comes into existence of an industrial dispute. To read into definition the requirement of written demand for bringing into existence an industrial dispute would tantamount to rewriting the section. Thus there can not be a doubt that for the existence of an industrial dispute there ought to be a demand by the workmen and a refusal to grant it by the Management. The grievance of the workmen and the demand for its redressal must be communicated to the Management. Coming to the case at hand it is crystal clear from the pleadings and evidence of the parties that there was a demand on behalf of the Union for banning of the outsourcing keeping in view the term and condition of the bi-partite settlement of 2005. Despite such resistance by the 2nd Party Union to the outsourcing of Armed Guards, the Management released advertisement inviting tenders for such outsourcing of Armed Guards. Thus there was a difference of opinion on the mode and method of recruitment against the posts of Armed Guards between the 2nd party Union and the Management. Further, the dispute is connected with the employment/the terms of employment or with the condition of labour . Hence, such dispute or difference of opinion comes within the per view of Section 2(k) of the Act and therefore, the contention raised by the Management does not have any force. The issue is answered accordingly in favour of the 2nd. Party Union.

7. The next point of controversy raised by the Union is that releasing of advertisement for out sourcing Armed Guards is going to affect the service conditions of the workmen of the Management Bank. Since it affects the service condition of the employees already in service , the Management Bank is required to issue /circulate notice U/s.9-A before making any advertisement to go for outsourcing for Armed Guards. Contrarily it is the contention of the Management that outsourcing in this regard is a temporary phenomena due to urgency need of deployment of guards in vulnerable branches and for the reason of shortage of permanent Armed Guards. A substantial number of vacancies are available against such sanctioned posts of Guards and as it would take a considerable time to go for a recruitment process to fill up such posts., the Bank Management has gone for outsourcing Armed Guards to meet the

urgency. The guide lines of Reserve Bank of India has also suggest for such outsourcing. There is also nothing on record to show or to establish that the Management is abolishing such permanent posts of Armed Guards. Making advertisement in this regard does not affect any service condition of the employees of the Bank and as such no notice as contemplated U /s.9-A is required before releasing advertisement. Admittedly, the 2nd party union has not produced any paper or credible evidence to show that the Management is going to abolish the posts of Armed Guards for which it has released advertisement inviting tender for such outsourcing of Armed Guards. Mere apprehension on the basis of news paper advertisement for such outsourcing of Armed Guards cannot be counted or amounted interference or a change in service conditions of the employees. Such administrative decision for the sake of immediate security of the Bank cannot also be counted or treated a service condition in any stretch of imagination. Such action of the Management not being listed in Schedule-IV of the Act does not mandate that a prior notice as contemplated U/s.9-A of the Act is to be circulated or issued. That being the position there is no need on the part of the Management to issue a notice to the Union before releasing advertisement. The Management has its own administrative discretion as to how it can run its establishment smoothly. For the reasons mentioned above the Management cannot be held to have played any unfair labour practice by releasing advertisement for out sourcing without a notice to the Union. Therefore, the issue of unfair labour practice as raised by the Union has no merit.

8. The next issue of the 2nd Party Union opposing the advertisement is that there was a bi-Partite settlement eight in numbers on 2nd. June, 2005 between Indian Banks Association representing the employers of the Bank and the Bank Employees Federation of India and 4 other Unions representing the workmen Union i.e. the Employees working in the Banks. The Management Bank and the 2nd Party Union being affiliated to Indian Banks Associations and Banks Employees Federation respectively are bound by the said settlement. As per Clause-31(h) of that Bye Party Settlement the Management Bank shall endeavour to retain skilled staff and development in-house competency. If it is required they may out source only I.T. and its related activities in respect of specialised area where in-house capability in I.T. sector is not available. The said clause has not been modified or rescinded even though two more bi-partite settlements have been entered into between the Indian Banks Association and Banks Employees Federation. In that view of the matter the Management Bank is prohibited and estopped to go for out sourcing of Armed Guards. On the other hand the stand taken by the Management Bank that the term of settlement do not prohibit the Management to adopt the method of outsourcing for such Armed Guard jobs any prohibition or restrain in this regard would amount an interference in the day to day administration of the Bank as well as its administrative discretion as to how it can run its business smoothly and economically.

Before coming to the issue it is profitable to mention here that ''Settlement'' as defined in the Act means a settlement arrived at in course of conciliation proceeding and includes a written agreement between the employer and the workmen arrived at otherwise than in course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as they may be prescribed and a copy thereof has been sent to the appropriate Government and the conciliation Officer. Thus, the definition of settlement envisages two categories of settlements i.e. (i) a settlement which is arrived at in course of conciliation proceeding which is arrived by the assistance and concurrence of the conciliation officer (ii) a written agreement between the employer and the workmen arrived at otherwise than in course of conciliation proceeding. It is well settled that the legal effect of both the categories of settlement are not identical .Section.18(1) provides effectiveness of the settlement arrived at otherwise than in course of conciliation proceeding provided it satisfies other conditions as required under the Act. The 2nd category of settlement binds only to the actual parties to the agreement under the provisions of Sec.18(1) of the Act. To make the party bound by the settlement U/s.18(1) of the Act, Rule-58(2) of the I.D. (Central Rules ,1957) prescribes the manner of signing the settlement and procedure of its communication to the appropriate Govt. Coming to the case at hand it is found that the 2nd party Union has produced the copies of the said bi partite settlements of 2005 and subsequent two bi-partite settlements.. No serious dispute in this regard has been raised by the Management Bank except to a contention that there is no prohibition in the settlement to go for outsourcing of other nature of jobs. The 1st Party Management has not also disputed that the settlement was not made in accordance with the requirement of the provisions under the I.D.Act. It is not also a stand that the Bank was not a party to the said settlement. It is well settled that a settlement ought not to be interfered with so easily, even though it may operate with a little bit of harassness to either sides and there ought to be some amount give and take for the proper industrial peace and harmony in the country . Therefore, law courts have a bounden obligation to maintain such a settlement and to give due consideration to a settlement arrived at between the recognised Union and the Management. It would therefore, be improper for industrial adjudication, to ignore the settlement and insert some thing which is totally different. Further, the settlement has to be accepted or rejected as a whole and in construing a settlement, if two views are possible the view which is more favourable to the workers should be adopted. Every settlement is an arrangement or agreement , though every arrangement or agreement is not a settlement as defined in the Act. An agreement or arrangement will not be a settlement merely because the parties to the dispute chose to call it as a settlement and such agreement or arrangement is incorporated in a memorandum of settlement signed by the parties for the purpose of settlement.

9. Keeping in view the principles elaborated above now it is to be examined whether the bi-partite settlement under Ext.1 prohibits or restrains the Management from releasing an advertisement for outsourcing Armed Guards. On a close reading of the settlement Ext.1 it is emerging that the settlement was arrived at between the parties under the provisions of Section-2-(P) and Section-18 (1) of the Industrial Disputes Act,1947 read with Rule.58 of the Industrial Disputes (Central) Rules,1957. Similarly, two other settlements under Ext.2 and 3 were also executed between the parties on 27.4.200 and on 25.5.2015 respectively. Those settlements were drawn U/s.18(1) of the Act read with Rule 58 of Industrial Disputes (Central) Rules. Perusal of Exts.2 and 3 does not disclose that clause 31(h) of 2005 settlement is not changed in any manner or interfered with. On perusal of the evidence of W.W.1 as well as M.W.1 along with documents proved before the Tribunal it is coming forth that as per the settlement of the year 2005 the Banks shall endeavour to retain re-skilled staff and to develop in- house competency. However, they may outsource I.T. and its related activities in respect of specialised area where in-house capability is not available. This term and condition in Clasuse 31(h) of the bi-partite Settlement, 2005 is not interfered or modified in any manner by the settlement of the year 2010 and 2015. The Management neither in their Written Statement nor in their evidence or argument has claimed removal or modification of such clause by any other settlement between the parties. It is also not in dispute that the 1st. Party Management being a member of the Banks Federation has an obligation to honour such settlement and similarly, the 2nd Party Union being a member of the Banks Employees Federation has a right to claim for enforcement of the said settlement. It is not also disputed by the Management that Settlement under Ext.1,2 and 3 are the settlements U/s.2(P) and Section 18 sub clause 1 of the Act. When outsourcing of Armed Guards and other ancillary services is restricted except in the matter of outsourcing in I.T. Sector and when the subsequent bi-partite settlement has neither modified nor touched the provisions of the Settlement 2005, the Management should not be expected to go for outsourcing of the Armed Guards. It is also clear from the bi-Partite settlements marked Exts.2 and 3 that the provisions of all earlier settlements including those of l 2nd,June,2005 shall continue to govern the service conditions except to the extent of the same are modified by subsequent settlements. In that view of the matter the steps taken by the Management to outsource the Armed Guards ignoring the existing procedure of recruitment of the Armed Guards appears to have been a violation of the terms of the agreement/settlement relating to conditions of services of such Armed Guards and hence, it is an Industrial Dispute. It is not also denied by the Management that a circular was issued regarding outsourcing of Armed Security Guards. When it was agreed between the parties that no outsourcing can be made for Armed Guards, any effort in this regard would amount violation of the terms of settlement. Hence, the action of the Management Bank for taking steps to outsource the job of Armed Guards instead of making an effort to appoint such Armed Guards in conformity to the Recruitment Rules cannot be held legal and justified. Such action of the Management for outsourcing the Armed Guards is a clear cut violation of the terms and conditions of the bi-partite settlement.

Accordingly, the 1st Party Management is directed to follow the terms and conditions of the Settlement of the year 2005 in regard to the engagement of Armed Security Guards through Sainik Board till no further settlement in this regard is arrived between the parties.

10. In the result, the reference is decided affirmatively in favour of the 2nd Party Union.

The award be sent to the Ministry as per procedure for its notification.

Dictated & corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 20 नवम्बर, 2019

का.आ. 2040.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पारादीप पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 25/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.11.2019 को प्राप्त हुआ था।

[सं. एल–38011/1/2016–आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 20th November, 2019

S.O. 2040.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2016) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court,* Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of *Paradip Port Trust,* and their workmen, received by the Central Government on 20.11.2019.

[No. L-38011/1/2016-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, BHUBANESWAR

Industrial Dispute Case No. 25 of 2016

Dated of passing of the award 01.07.2019

Present: Shri B. C. Rath, LL.B., Presiding Officer,
Central Government Industrial Tribunal, Bhubaneswar

Between:

The Chairman,
Paradeep Port Trust,
P.O. Paradeep,
Jagatsinghpur, Odisha …First Party- Management

-Versus-

The General Secretary,
Paradeep Port Workers Union,
At Badapadia, Paradeep Port,
District-Jagatsinghpur. …2nd. Party Workman/Union

Appearances:-

For the First Party Management : Sri G.Pujari

For the 2nd Party workman : Sri Sanjaat Das

AWARD

The Government of India, Ministry of Labour and Employment have referred an Industrial Dispute between the above named parties for its adjudication vide its order No,L-38011/1/2016-IR(B-II) under Clause (d) of sub-section(1) and sub-section(2-A) of Section 10 of the Industrial Disputes Act,1947(14 of 1947) and the Schedule of the reference is as follows:—

1) "Whether the demand of the Union to fill up of 5% direct recruitment vacancies including accumulated backlog vacancies amongst the compassionate aspirants since 2001 in the cadre of Class –III & IV employees by the Management of Paradeep Port Trust is legal and/ or justified. If not so, what relief the workmen are entitled to ?

2) Whether the demand of the union to regularise the services of all compassionate appointees/aspirants of the deceased employees engaged through different contractors of the management is legally tenable and justified ? If not so, what relief the workmen are entitled to ?"

2. Shorn of unnecessary details the case of the 2nd Party Union as emerges from its statement of claim is that the 1st Party Management i.e. Paradeep Port Trust has its own scheme for compassionate appointment introduced vide its Memorandum No.AD-RSC-IV-21-02/2013/4121 dated.7/8-October,2013 which was approved by the Board of Trustee of Paradeep Port Trust . In the said operative scheme posts of Group "C" and "D" are opened for compassionate appointment with a ceiling of 5% vacancies arising in a year subject to satisfaction of certain terms and condition as well as qualification prescribed in the Recruitment Rules. According to the Union such appointment can be made also against technical posts in Group "C" and erstwhile Group "D " level. The 5% quota of vacancies are to be calculated on the basis of total direct recruitment vacancies arisen in an year in the posts. The scheme does not restrict employment of a family member of the deceased or the employee retired on medical ground in Group "D" category to a Group " D " post only. A family member of such Group D employee/deceased can be appointed to a Group C post provided he/she has required eligibility i.e the qualification and a vacancy in such Group C post is available. The above

scheme is stated to have been introduced on the basis of a scheme of such compassionate appointment circulated and adopted by the Government of India, Ministry of Personnel , Pension and Public Grievance. It is the claim of the 2nd Party Union that the Board of Trustees of Paradeep Port Trust has also resolved in the meeting held on 24.7.1997 and 3.6.2003 that compassionate aspirants will be engaged against the regular posts. Time limit for making such appointment is also waived out by a memorandum and the appointments are also exempted from ban order of filling up vacant posts. It is the grievance of the Union that inspite of availability of large number of vacancies for regular posts in the category of Group-C and Group-D and newly designated posts of MTS in the establishment of the Management, the compassionate aspirants/applicants have been employed or engaged through the Contractors / out sourcing agencies for performing the duties of regular employees such as Clerical, Computer, Stenography etc. against the vacancies in those categories in order to debar them from equal pay for equal work. The work/duty performed by such aspirants/applicants are perennial in nature and as such contract labour for such works/duties are not permissible keeping in view the provisions of Section-10 of the Contract Labour Act. It has also been claimed that the compassionate applicants are engaged through the contractor/out sourcing agencies in name sake and in a sham and camouflage manner though the aspirants are working directly under the control and supervision of the Officers of the Management. Thus the conduct of the 1st Party Management in exploiting the labour of such aspirants is covered by unfair labour practice provided in Section-25-P of the Industrial Dispute Act. It is also alleged by the 2nd Party that accurate number of vacancies required to be filled up on the basis of ceiling fixed in the scheme are not filled up from the compassionate applicants in queue as a result of which they are being compelled to work through the out sourcing agencies/contractors with less pay/wages against the wages/pay to which they could have been enjoyed against regular vacancies. Vacancies in the Group-III and IV posts available for compassionate grounds from 2001 onwards are not filled up duly as a result of which more than 40 aspirants being in queue are engaged/employed through the contractors. There is an accumulated backlog vacancies for such compassionate aspirants from the year 2001 against which the aspirants workmen engaged through the Contractors can be regularised from the date of such vacancies . It is the claim of the 2nd Party Union that they approached the Management for absorption of such aspirants working through the Contractors. But, the Management did not pay any heed to their demand for which a dispute was raised before the labour machinery. Consequently the reference is made as stated earlier for adjudication of the dispute.

3. Refuting the allegation raised by the 2nd Party Union the 1st Party Management has advanced its stand that the aspirants for whom the dispute has been raised are not '' workmen'' of the Management as defined U/s.2-S of the Act. No relationship of employer and employee exists between the two parties. The aspirants being not eligible for member of the 2nd party Union, the 2nd party is not competent to espouse the case of the aspirants. It is also the stand of the Management that the dispute is not an Industrial Dispute as defined in the Act. It has been contended by the Management that compassionate appointment scheme was introduced on 20.5.1987 by a circular of the Management and the same has been modified from time to time including the last modification made on 7.10.2013. Such appointment is introduced to give relief to the families in hardness and considering the family condition such as size of the family, age of the children, essential needs of the family and its earning in order to save the family from destitute. The benefit of compassionate employment is neither a condition of service nor a right enforceable under the Act. It is not also flowing from any settlement or the standing order of the Management. Such appointment is purely a discretionary function of the Management who shall act taking into account of various factors as provided in accordance with the terms and conditions of the scheme as well as in accordance with the Recruitment Rules. The claim made by the 2nd Party Union is not genuine and the same is also not supported by the facts and law. Hence, prayer has been made for rejection of the claim statement.

4. On the aforesaid pleadings of the parties the following issues have been settled.

ISSUES

1) Whether the reference is maintainable under the Industrial Dispute Act?

2) Whether the demand of the Union to fill up 5% direct recruitment vacancies including accumulated backlog vacancies amongst the compassionate aspirants since 2001 in the cadre of class-III and IV employees by the Management of Paradeep Port Trust is legal and justified?

3) Whether the demand of the Union to regularise the services of all compassionate appointees/aspirants of the deceased employees engaged through different contractors of the Management is legally tenable and justified ?

4) If not, to what relief the workmen are entitled to ?

5. The 2nd Party workman has examined W.W.1 in support of its case and filed Xerox copy of the compassionate scheme, true copy of enlisted workers under compassionate scheme by the Pardeep Port, true copy of the letter dt.7.2.2006 issued by the Electrical and Mechanical Department of PPT, true copy of the letter/order issued by the Administration Department of PPT, true copy of letter dt.17-8-2006 of the Secretary, PPT to the Contractor and true copy of the letter dt.18.10.2013 issued by the Administration Department to the Traffic Department about engagement

on compassionate appointment which are marked as Ext.1 to Ext.6 . On the other hand the Management has examined M.W.1 the Senior Asst. Secretary to refute the claim of t he 2nd Party .

FINDINGS

6. For the sake of convenience the issue of maintainability of the reference is taken into consideration first. The maintainability of the reference is challenged by the Management on two grounds, The first ground of challenge is that the dispute of compassionate appointment being out of perview of the service condition and the same not being the term and condition of the standing order of the Management cannot be an Industrial Dispute as defined U/s.2-K of the Act. The Act defined " Industrial Dispute" means any dispute or difference between the employee and employer, and between employer and workmen or between workman and Workmen which is connected with the employment or non-employment or the terms of appointment or with the conditions of labour of any person. As per the settled principle of the Hon'ble Apex Court an Industrial Dispute can arise within the meaning of Section-2-k only when there is a demand by the workman and a denial of the same by the Management. Thus, there must be an existence of a dispute/ difference so as to cloth the appropriate Government with the jurisdiction to refer the matter for adjudication exercising its authority U/s.10 of the Act. Further it has been settled by the Hon'ble Apex Court that the Act does not contemplate as to existence of a dispute in any particular specific or prescribed manner. The term "Industrial Dispute" connotes a real and substantial difference having some element of persistency and continuity till resolved and likely, if not adjudicated to endanger the industrial peace of undertaking or the community . Keeping in vie the above principle and the term Industrial Dispute as defined in the Act is read, it can be safely said that the claim of the dependant of an Ex-workman (the workman who met the death or suffered permanent total disablement) for his non-employment inspite of provisions of Compassionate appointment having been espoused by recognised Union of the Management can safely be termed as an Industrial Dispute . The other ground of objection is that the claimant raising the dispute through the 2nd Party Union are not "workman" of the 1st Party Management. Further, the Union can not raise a dispute on behalf of those claimants as the claimants are not members of the 2nd Party Union. If we go through the definition of the " workman" in Section 2-S of the Act there is no mandate that a person in continuity of service can be designated as a workman. The person who has been discharged on ground of medical unfitness can be counted as workman of the Management. It is also not disputed that the claimants having been employed through different contractors are doing different works of the 1st Party Management. Thus the work performed by the claimant/compassionate aspirants are the work of the principal employer i.e. the 1st Party Management and as per the settled principle they can be safely counted as workmen of the 1st Party Management. In the above facts and circumstance there cannot be any doubt that an Industrial dispute exists between the workmen engaged through contractors and the 1st Party Management being the principal employer and such dispute relates to their non-employment as well as terms of their appointment and also on the condition of their labour (wages). That being the position the contention raised by the Management in regard to maintainability of the reference has no force. The issue is answered accordingly in favour o the 2nd Party Union.

7. The next point for consideration is whether the dispute as Emerging from the terms and schedule of the reference is legal and Justified and the same is legally tenable. On a close reading of the term and schedule of the reference it is seen that the 2nd Party Union has raised two disputes and issues Nos.2 and 3 are accordingly settled. Issue No.2 is settled on the basis of the dispute i.e the demand of the Union for filling up of 5% of direct vacancies in the cadre of Class III and Class IV including accumulated backlog vacancies existing since 2001 from compassionate aspirants. The other dispute being settled as issue No.3 is whether the dispute i.e demand of the Union to regularise the services of all compassionate appointees/aspirants engaged/employed in 1st Party Management through different contractors of the Management is legal and justified.

8. Coming to the 1st dispute i.e. Issue No.2 there is no serious dispute between the parties that a scheme of compassionate appointment has been adopted by the 1st Party Management keeping in view the various circulars issued by the DOPT from time to time in this regard. It is not also challenged seriously by the Management that as per the said scheme 5% of direct vacancies in the category of Group-III and Group-IV posts which are termed presently as Group-C and Group-D categories are to be filled up from the compassionate aspirants/applicants in queue in deviation of the Recruitment Rules prescribed for filling of such posts. The Management does not challenge the contention of the 2nd Party Union that compassionate appointments are not covered by any ban order of Recruitment and as such there is no difficulty to fill up the posts of regular vacancies falling in such category. Though, the 2nd Party claims in his pleadings as well as in the evidence of its witnesses that backlog vacancies for such compassionate appointments are existing from the year 2001 and compassionate aspirants are in queue on account of the managements callousness to take any step to fill up such fixed percentage of the direct vacancies, no credible evidence or material has been placed before the Tribunal to hold that a particular number of direct vacancies out of the ceiling of 5% are still lying vacant due to inaction of the Management. Similarly, the Management has not pleaded specifically or adduced any credible evidence to draw an inference that 5% permanent vacancies in Group-III and Group-IV categories from Group-C and Group-D categories are already filled up by such compassionate aspirants in accordance to the terms and conditions of the compassionate scheme. The Management has not specifically denied that

any vacancy under the ceiling of 5% is not available for further appointment or absorption of compassionate applicants/aspirants. It cannot be over sighted that law is well settled that appointments in public services should be made directly and strictly on the basis of open invitation of application on merit. No other mode of appointment nor any other consideration is permissible. Neither the Government nor the public authority are at liberty to follow any other procedure or relax the qualification laid down by the Recruitment Rules for the posts. However there are some exceptions in the interest of justice and to meet certain contingencies . One such exception is in favour of the dependant of an employee dying in hardness and leaving his family in penury and without any means of livelihood. But such compassionate appointment can be countenanced only as against a specified number of vacancies arising in a year and in the case at hand 5% of direct vacancy is the ceiling. As per the settled principles of the Hon'ble Apex Court, the Court/Tribunal cannot direct appointment on compassionate ground de hors of the provisions of the scheme in force governed by the Rules/regulations/instructions. The Courts can not compel the authority to exercise its jurisdiction in a particular way. Having regard to the facts and circumstances as narrated above and the settled principles enunciated by the Hon'ble Apex Court from time to time and keeping in vie the demand raised by the 2nd party Union on ground of the compassionate appointment scheme adopted by the 1st Party Management it can be safely held that demand of the 2nd Party Union to fill up 5% of regular vacancies in the category of Group III and Group IV posts is legal and justified provided if any backlog vacancies under such compassionate scheme from the year 2001 onwards are yet to be filled up. Therefore, the Management is to consider the claim of such aspirants in queue and appoint them against such regular vacancies without any delay provided vacancies under the ceiling are available and the aspirants are satisfying the terms and conditions of such compassionate scheme and their educational eligibility under the Recruitment Rules.

9. Coming to the Issue No.3 i.e. the dispute whether the demand of the Union to regularise the service of all compassionate aspirants who are working in the establishment of the Management being engaged through out sourcing agencies/contractors and performing the duties supposed to be discharged by the regular employees is legally tenable and justified. It is seen from the pleadings and evidence of the 2nd Party that such demand is advanced on a contention that the aspirants are appointed by the 1st party Management and in the name sake they have been shown to have been employed/engaged by the contractors/out sourcing agencies to do various works in the establishment of the 1st Party Management. It is the further claim of the 2nd Party Union that the appointment through Contractors are transaction of sham and camouflage in nature and such contract labour is not permissible in law, keeping in view the provision of Section 10 of the Contract Labour Act and the fact that works performed by such aspirants are perinable in nature. It is further pleaded such compassionate appointees are directly working under the control and supervision of the 1st. Party Management. Though they are discharging similar nature of work /duty entrusted to regular employees , they are not paid wages equivalent to the wages paid to a regular employee and as such the principle of equal work equal pay is being violated. W.W.1 has testified that he was subjected to recruitment test and given appointment by the Management on ground of he being an compassionate aspirant. Though, he is working from the year 2005 and regular vacancies are available in the establishment of the Management, he is shown as a contract labour and paid less wages. But , no document i.e. the appointment letter is filed by the 2nd Party Union to establish that compassionate aspirants in queue given appointment directly or indirectly by the 1st Party Management. On the other hand W.W.1 admits in her cross examination that he and other aspirants are engaged through contractors on compassionate ground by using the good office of the Management. His oral testimony is not specific to suggest that any vacancy or vacancies in Group-III and Group- IV categories under the ceiling fixed for compassionate appointment are available in the Management and the Management is neglecting to fill up those vacancies as a result of which he and other aspirants are not being appointed or absorbed against such vacancies. However, it is emerging from the argument advanced by the authorised representatives of the 2nd Party Union that large number of aspirants are engaged through contactors without being regularised against vacancies available with the Management and they should have been absorbed against regular vacancies from the date of their engagement through contractors. Admittedly, the demand of regularisation of such aspirants with effect from their engagement through the contactor is neither in the term of schedule of the reference nor it is pleaded in the statement of claim. Such demand seems to have been incorporated in the rejoinder filed by the 2nd Party and in its written argument. Such claim cannot be taken into consideration and adjudicated in the present proceeding as the Tribunal cannot go beyond the schedule and term of the reference as set out by the principle of the Hon'ble Apex Court as well as various High Courts.

10. That apart when there is no credible evidence to show that such aspirants were given appointment letters issued by the Management and their wages are paid directly by the Management it can not be held that the relationship of direct employer and employee exists between them. Law is well settled that burden lies on the person who claims to be a direct employee of a particular employer. Such burden can not be shifted to the employer to show that the claimant is not his employee. When it is pleaded and shown that the aspirants are engaged through contractors but, for the name sake the burden lies on the 2nd Party Union to lift the veil to establish the relationship of employer and employee. The pleading and evidence of employment/engagement under direct control and supervision of the 1st Party Management is not sufficient to hold that the aspirants are employees of the 1st Party Management. It cannot be over looked that when contract labour or persons are being engaged through out sourcing agencies/ contractors, the

principal employer has some sort of control or supervising authority on the work/duty performed by such contract labour. Further, it is quite possible that the 1st Party Management in order to help the family of a deceased employee and to save the family from destitute may utilise its good office to provide them employment immediately under a contractor entrusted with certain work order. The same act does not mean that the employment/appointment was given by the 1st Party Management. For the discussions and reasons mentioned above the compassionate aspirants, who are performing different duties and works in the establishment of the 1st Party Management being engaged through contractors, cannot be held to be employees of the 1st Part Management. Similarly, such contract labour cannot be automatically absorbed against the posts /vacancies keeping in view the provisions of Section-10 of Contract Labour Act as this Tribunal has no authority to declare that the works performed by such aspirants are perennial in nature and engagement of contract labour are in violation of provisions of Section-10 (2) of the contract Labour Act.

11. Now coming to the claim whether all the aspirants working through different contractors can be regularised against regular vacancies available in the 1st Party Management, the citations relied upon by the authorised representatives of the Union more particularly the decision of the Hon'ble High Court of Odisha in the case between Bhabani Sankar Pandit and others (Petitioners) –Vers- Registrar of Cooperative Societies (O.Ps) arising out of W.P.(C) No.1544/2003 is no way helpful to the disputants as they have been pronounced in the facts and circumstance not identical to the present one and the principles and observations set out there under are in different than the present one. Rather it is apparent from the decision in the case between Union of India –Versus- Joginder Sharma reported in 2003-I LLJ-501 the Hon'ble Apex Court have held that the Courts cannot direct appointments on compassionate ground de hors the provisions of the scheme in force and governed by rules, regulations and instructions, and in the case , the department of the Government concerned is directed , as a matter of policy, not to deviate from the mandate of the provisions underlying the scheme and refuses to relax the stipulation in respect of ceiling fixed therein. The Court cannot compel the authorities to exercise its jurisdiction in particular way and that too by relaxing the essential conditions, when no grievances of violation of substantial rights of parties could be held to have been proved otherwise.

In the case between Hindustan Aeronautics Ltd. –Vers- A. Radhika Thirumalai reported in 1997-I LLJ-492 it has been observed.

> "In absence of a vacancy it is not open to the Corporation to appoint a person to any post. It will be a gross abuse of the powers of a public authority to appoint persons when vacancies are not available. If persons are so appointed and paid salaries , it will be a mere misuse of public funds, which is totally unauthorised. Normally, even if the Tribunal finds that a person is qualified to be appointed to a post under the kith and kin policy , the Tribunal should only give a direction to the appropriate authority to consider the case of the particular applicant, in the light of the relevant rules and subject to the availability of the post. It is not open to the Tribunal either to direct the appointment of any person to a post or direct the authorities concerned to create a supernumerary post and then appoint a person to such a post."
>
> In the case between State Bank of India and another –Vers- Somvir Singh reported in 2007-I 239 (SC) it is held that,
>
> As a rule appointment in the public service should be made strictly on the basis of open invitation of applicants and merit. No other mode of appointment nor any other conditions is permissible . Neither the Government nor the public authorities are at liberty to follow any other procedure or relax the qualification laid down by the rule for the post . However, to this general rule which is to be followed strictly in every case , there are some exceptions carved out in the interest of justice and to meet certain contingencies . One such exception is in favour of the dependant of an employee dying in harness and leaving his family in penury and without any means of livelihood . In such case out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided the family would not be able to make both ends meet. A provision is made in the rules to provide gainful employment to one of the dependant of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less post held by the deceased.

In the case of Local Administration Department and another Versus- M Selvnayagam @ Kumaravelu reported in 2011-III-ILJ-10 (S.C) it is settled that,

Ideally, the appointment on compassionate basis should be made without any loss of time but having regard to the delays in the administrative process and several other relevant factors such as the number of already pending claims under the scheme and availability of vacancies etc. Normally the appointment may come after several months or even after two to tree years, it is not our intent , nor it is possible to lay down a rigid time limit within which appointment or compassionate grounds must be made but what needs to be emphasised is that such an appointment must have some bearing on the object of the scheme."

From the above principles and observations of the Hon'ble Apex Court, it can be concluded that all compassionate aspirants in queue cannot be appointed or adjusted or absorbed inspite of vacancies available under the employers except against the vacancies coming under the ceiling fixed for such compassionate appointment. In the above back drops, the aspirants who are working under the 1st Party Management being engaged through contractors and under the relationship of principal employer cannot be regularised or absorbed against regular vacancies except against 5% ceiling of such vacancies arising in an year and as such the 2nd demand is not tenable and justified in the eye of law.

12. Accordingly, the 1st party Management is directed to consider the claim of the compassionate aspirants in queue for their appointment against regular vacancies in Group-III and IV category vacancies coming under the ceiling of 5% regular vacancies fixed for compassionate appointment and if any backlog is available from the year 2001 such aspirants in queue shall be appointed and absorbed within two months of the publication of the award provided such aspirants satisfy all other terms and conditions of the scheme and they are qualified to hold such posts.

The reference is answered accordingly.

Dictated & corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 20 नवम्बर, 2019

का.आ. 2041.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ सं. 44/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.11.2019 को प्राप्त हुआ था।

[सं. एल—12011/14/2014—आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 20th November, 2019

S.O. 2041.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 44/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of Bank of India, and their workmen, received by the Central Government on 20.11.2019.

[No. L-12011/14/2014-IR(B-II)]

SEEMA BANSAL, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 44/2014

Employer in relation to the management of Bank Of India, Zonal Office, Patna

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers : Sri Vineet Kumar. Sr. Manager

For the workman. : Sri B. Prasad. Rep.

State : Jharkhand. Industry:- Banking

Dated 25.10.2019

AWARD

By Order No.L-12011/14/2014 (IR (B-II) dated 24/04/2014 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub–section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Zonal Office Patna by not considering the Representation of the workman Babloo Kumar for transfer from Mahdah to Patna was correct? What relief he was entitled for?"

2. After receipt of the reference, both parties are noticed. During the pendency of the case Authorized representative of the workman appears and files Petition in which he submits that he does not want to contest the reference, as their demand has been fulfilled. Dispute between parties has been resolved in the meantime, Therefore, it is felt to pass an award of No. Dispute accordingly.

D. K. SINGH, Presiding Officer

नई दिल्ली, 20 नवम्बर, 2019

का.आ. 2042.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 64/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 20.11.2019 को प्राप्त हुआ था।

[सं. एल–12011/82/2014–आईआर (बी-II)]

सीमा बंसल, अनुभाग अधिकारी

New Delhi, the 20th November, 2019

S.O. 2042.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 64/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of Allahabad Bank, and their workmen, received by the Central Government on 20.11.2019.

[No. L-12011/82/2014-IR(B-II)]

SEEMA BANSAL Section Officer

ANNEXUR

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL: BHUBANESWAR

Industrial Dispute Case No. 64 of 2014

Date of passing of award 09.10.2019

Present:- Sri B. C. Rath, LL.B., Presiding Officer,
Central Government Industrial Tribunal, Bhubaneswar

Between:-

The Deputy General Manager,
Allahabad Bank , Zonal Office,
3/1-B, IRC Village, Civic Centre, Nayapalli,
Bhubaneswar, Orissa-751 015. …1st Party Management

-Versus-

The General Secretary,
All Orissa Allahabad Bank Employees' Union,
3/1-B, IRC Village, Civic Centre, Nayapalli,
Bhubaneswar, Orissa-751 015 …2nd Party Union

Appearance:-

For the 1st Party Management : Authorised Representtive

For the 2nd Party Workman : SriS.P.Mohanty.

AWARD

The award is directed against a reference ;made by the Government of India, Ministry of Labour vide its letter No. L-12011/82/2014(IR(B-II)) dated.25.11.2014 in exercising its authority under Clause(d) of sub section(1) and sub-

section (2A) of Section 10 of the I.D. Act,1947(14 of 1947 as an Industrial Dispute arose between the parties mentioned above and the terms of reference is as follows:—

"Whether transferring the concerned employee in this instant case shall be taken as violation of legally valid settlement ? What relief should be granted ?"

2. The case of the 2nd Party Union is that the Union being the affiliated State Unit of All India Allahabad Bank Employees Coordination Committee (AIABECC) is the recognized Union having membership of majority employees of the Bank. As per the Settlement between the Management Bank and the recognized Central Union, the office bearers of Central Union as well as the office bearers of State affiliated units subject to limitation 1% with minimum of 3 and maximum of 25 members of such office bearers are exempted from rotational transfer without consent from the said office bearers employees. The settlement dt.22.3.2001 was arrived U/s.2(p) and 18(I) of the I.D. Act,1947 read with Rule 58 of I.D. Central Rules,1957 and the same was circulated among all branches and office of the Management Bank vide Circular No.6748 ADMN IR/2000-2001 dated.24.3.2001 of the head office of the Management Bank. It is the claim of the 2nd Party Union that keeping in view the above settlement and Circular of the head office no office bearer as per the limitation can be transferred under the scheme of rotational transfer without his consent. Sri Shyama Prasad Mohanty and Sri Bhima Sethi being the Secretary and the Assistant Secretary respectively of the 2nd Party Union and presently posted as Special Assistant of Cantenment Road Branch ,Cuttack and Head Cashier-II of the Industrial Estate Branch, Cuttack are covered by such exemption of rotational transfer without their consent. The Management Bank issued letters to them for their consent for rotational transfer. Both of them refused consent vide their letter date d.16.12.2013. Inspite of such settlement between the parties and refusal of consent the Management Bank issued letter on 6.1.2014 seeking their consent for rotational transfer to Branch of their choice within three days of receipt of such letter. As the said office bearers had completed five years tenure in their respective posting. Hence, the 2nd Party raised a dispute before the labour machinery challenging the proposal moved by the Management in violation of the settlement of the year 2001. Accordingly the dispute has been referred for its adjudication.

3. The Management being noticed has appeared and filed its written statement taking a stand that the allegation of violation of any clause of settlement of 2001 is not correct. The letter dt.6.1.2014 were issued seeking consent of the office bearers/ employees for their "rotational transfer". As no transfer order was issued in violation of the settlement there exists no industrial dispute. Therefore, the reference needs to be dismissed.

4. On the aforesaid pleadings of the parties the following issueshave been settled for adjudication of the dispute.

ISSUES

(1) Whether the reference is maintainable under the Industrial Disputes Act ?

(2) Whether transferring the concerned employee in this instant case shall be taken as violation of legally valid settlement?

(3) What relief should be granted?

The 2nd Party Union has examined one J.P.Basa its Working President as W.W.1 and relied upon the documents like copy of Memorandum of Settlement dated.2.3.2001,copy of circular dated.24.3.2001, copy of circular dated 7.4.2001, copy of letter of the Union dated. 25.5.2013 to the Management, copy of letter dated.11.12.2013 of the Management issued to S.P.Mohanty which are marked as Exts.1 to Ext.5,Ext.5/a respectively on the other hand the 1st Party Management has examined its Senior Manager as M.W.1 in respect its stand.

FINDINGS

5. For the sake of convenience all the issues are taken simultaneously for consideration as they are linked with each other.

As it appears from the pleadings and evidence of the parties that there is no serious dispute to the fact that that there was a memorandum of settlement between the Management of Allahabad Bank and AIBECC on 22.3.2001 under the provisions of Sec.2(P) 18(1) read with 58 of I.D. Act,1947 in which there was an agreement between the parties that office bearers of the Central Units as well as State Units of AIABECC subject to limitation of minimum of 3 and maximum of 25 office bearer/ employees are exempted from rotational transfer without their consent. There is also no serious dispute to the claim of the 2nd Party Union that Shyamaprasad Mohanty and Sri Bhima Sethi were the Secretary and the Asst. Secretary of the State Unit of the Employees Association by the relevant time when their consent for rotational transfer was sought and they refused to give consent for their transfer. The Management has not seriously challenged that again on 6.1.2014 letters were issued to them for their consent for such rotational transfer on account of they having completed five years in their respective posts. When the concerned employees submitted their reply to the earlier letter of such transfer, there was no occasion on the part of the Management Bank to issue fresh letter for consent as both the letters were issued within a short gap of two months. At the same time, it can be stated that no order of transfer was issued to the said office bearers. It has been

stated by the Management witness that the letters seeking consent were issued as per the provisions of the Settlement and in the event of completion of five years by the concerned employees in their respective branches . The Management has no intention to transfer the concerned employees against their consent and in violation of the provisions of the Settlement of 2001. That being the position it can not be said that the service condition of any form or any clause of the Settlement has been violated by the Management warranting interference by this Tribunal. The dispute appears to have been raised on apprehension of violation of the settlement keeping in view the 2nd letters for consent were issued to the concerned office bearer/ employees. When the 2nd Party Union and the Management have admitted their position and limitation for rotational transfer of officer bearer of the Union, there seems no industrial dispute existing between the parties.

Accordingly, the reference is answered .

The award be sent to the Ministry as per procedure for its notification.

Dictated & corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 20 नवम्बर, 2019

का.आ. 2043.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स स्टील अथॉरिटी ऑफ इण्डिया लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 06/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.11.2019 को प्राप्त हुआ था।

[सं. एल-26011/2/2003-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th November, 2019

S.O. 2043.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 06/2006) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Steel Authority of India Limited and other and their workman, which was received by the Central Government on 07.11.2019.

[No. L-26011/2/2003-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 30TH OCTOBER 2019

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

C R 06/2006

I Party

President,
Sh. M. Selvarajan,
VISL Mines Employees Union,
Gouse Sab Line, Old Town
Bhadravati
Shimoga - 577 301.

II Party

1. The Executive Director,
Steel Authority of India,
Vishweshwaraiah Iron & Steel Plant,
Bhadravati, Shimoga - 577 301

2. The Director,
M/s. Sudhir Transport Ltd.,
Handling Agents Regd. Off. No. 86,
Old Madras Road, Doorvaninagar,
Bangalore – 560 016.

Appearance

Advocate for I Party : Mr. J.V Prakash

Advocates for II Party : Mr. Ravishankar Patil /Mr. Arthur Pinto

AWARD

The Central Government vide Order No. L-26011/2/2003-IR(M) dated 13.07.2006 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the industrial dispute raised by the VISL Mines Employees Union against the management of Visvesvaraya Iron and Steel Limited (The Mines Manager) over the issue of absorption and regularisation of 130 contract workmen as permanent workmen of Steel Authority of India Limited (Visvesvaraya Plant, Bhadigund Limestone Mines) upon abolition of contract labour system by the Central Government under notification dated 17.03.1993 and to declare that their termination on 09.03.1998 by SAIL (Visvesvaraya Plant, the Mines Manager, Bhadigund Lime Stone Mines) and M/s Sudhir Transports Limited pursuant to letter dated 21.02.1998 is wholly illegal, irregular, malafide, arbitrary and not sustainable in law justified? If so, to what relief the concerned workmen are entailed?"

1. The claim of the 1st Party workman is, the Activity and Business of the 2nd Party requires raw materials like Iron, Lime Stone and Quartz. Iron ore is mined from Kemmannagundi Iron Ore Mine which is located in Tariker Taluk, Chikmagalore District. Lime Stone is mined from Bhadigund Lime Stone Mines which is located at Bhadravathi Taluk. The Mines are under the ownership of 2nd Party No.1; the Mining work is perennial in nature but the 2nd Party No.1 engaged several contractors and extracted Mining work. The contract labourers are working at Lime Stone mine for more than 20 years; though the contractors are changed the workers are continuously working in the same mine under the new contractor. The Central Government vide notification dated 17.03.1993 abolished Contract Labour System in respect of Lime Stone and Dolomite Mines in the Country. But the 2nd Party did not discontinue the contract labour system at Bhadigund Lime Stone nor did they absorb the existing contract labourers as their permanent employees. Since the contractor disappeared from 17.03.1993 these workers cannot be treated as contract labourers from 17.03.1993 onwards. The Assistant Labour Commissioner (Hubli) has cancelled the licence given in favour of the contractors. The 2nd Party No.1 challenged the notification of 17.03.1993 before the Hon'ble High Court in W.P No. 37342/1995.

2. It is further claimed, the 2nd Party No.1 had awarded contract for mining and supply of Lime Stone from Bhadigund Lime Stone Mines in favour of 2nd Party No. 2 for 3 years w.e.f 19.01.1996 by ignoring the notification issued by the Central Government. The contract is sham, illegal and nominal. The Writ Petition No. 37342/1995 was unconditionally withdrawn on 30.07.1997. All of a sudden, they also terminated the contract with 2nd Party No. 2 vide letter dated 21.02.1998. On 07.03.1998 the workers were informed, they will not be provided work from 09.03.1998 since the contract work is terminated by the 2nd Party No.1, without issuing any notice they terminated the services of 130 workers on 09.03.1998. From then onwards 2nd Party No. 1 is carrying on mining operations and supply of Lime Stone from Bhadigund Lime Stone Mines to the premises of the 2nd Party factory through another contractor by name M/s Hindustan Steel Works Construction Limited (HSCL) and the said contractor has engaged various sub-contractors; those sub-contractors have engaged their own labourers other than the concerned workmen of the 1st Party. Engagement of HSCL / contractor is not permissible subsequent to the notification of 09.03.1998. The 1st Party workmen are suffering without employment and are entitled to be reinstated by absorption and to be regularised as permanent employees of 2nd Party No. 1 from 17.03.1993. The Industrial Dispute raised by the 1st Party workmen regarding wrongful termination of 130 workmen is still pending. The union filed writ petitions before the Hon'ble High Court seeking direction and declaration that all the 130 contract labourers are entitled for absorption as permanent employees' w.e.f 17.03.1993, on abolition of the contract labour at Bhadigund Lime Stone mines by the Central Government vide Notification No. S.O.707 dated 17.03.1993. When the matter came up for hearing the case was kept pending at the request of the advocate for the 2nd Party No. 1 awaiting final decision of the Hon'ble Supreme Court on the issue of contract labour. Vide judgment dated 30.08.2000 the Hon'ble Supreme Court passed judgment in the matter of Steel Authority of India Limited and Others vs National Union Water Front Workers and Others. Based on the above judgment the writ petition filed by the union was disposed of on 06.10.2001 by the Hon'ble High Court with liberty to the union to raise Industrial Dispute and thus the Industrial Dispute is raised by the union.

3. It is further stated that some of mining workers of Bilikal Betta Quartz mines through their union challenged their illegal termination by raising an Industrial Dispute. The dispute was referred to the Tribunal in CR No. 97/1984, the Tribunal passed Award holding that VSL is the real employers of these workers and hence the retrenchment is null and void, the award was agitated by the management upto the Supreme Court. On finding that the workers of the contractors are reinstated in service but not paid same wages paid to the regular employees, the Apex Court ordered to pay the difference of salary. Based on the said orders of the Apex Court Management paid back wages to all the

workers. The 2nd Party No. 1 was providing several facilities to the 1st Party workmen under the provisions of Mines Act Mines rules, Mines creche rules and M.M.R etc. Quarters were provided in their labour colony for their residence; statutory records are maintained in respect of these workers; vocational training course were given to them. Their works were supervised by the Representative of the 2nd Party. Amount was deducted by the 2nd Party No. 1 towards Provident Fund contribution from their wages and clubbed the amount with the amount of employees of the VISL Provident Trust. The 2nd Party No. 1 being their real employer, they have statutory obligation and responsibility to reinstate all the workers as regular permanent employees of the Company.

4. The claim is contested by the 2nd Party No. 1 and 2.

5. The statement of the 2nd Party No. 1 / Steel Authority of India is to the effect that the reference is unsustainable in law on the ground that employment of contract workers in prohibited category of work cannot be a matter of Industrial adjudication. There is no provision under Contract Labour (Regulation and Abolition) Act, 1970 (CLRA hereafter) enabling the union or a contract labour individual to raise a dispute under the Industrial Dispute Act, 1947. Lime Stone is not a raw material required for the manufacture of special or alloy steel. Initially it was used in the manufacture of Cement and also for pig-iron furnaces. Both plants were closed in the year 1983 itself. Mining work at BGD mines was not permanent or perennial work, it is casual and intermittent; care has been taken to see that the contractors extend all the statutory benefits to the contract labourers. The contractors under whom contract labourers were working as on 17.03.1993 are not impleaded and not made parties. 2nd Party No. 1 is a Registered Principal Employer under the Contract Labour (R&A) Act, 1970. The registration is of 1971 and is continued and the same is not cancelled in the notification of 17.03.1993. One of the contractor Sh. Subhash Chand Jain was issued notice interalia referring to the notification of 17.03.1993, thereafter writ petition was filed before the Hon'ble High Court. During the operation of ad interim stay of the notification contract was awarded to 2nd Party No. 2. After withdrawal of the writ petition the contract is cancelled. The contractors have not terminated the service of their respective labourers. They are provided alternate employment; no claim is raised by the 1st Party on the basis of the subsequent events. The 1st Party workmen are neither the employees of 2nd Party No. 1 nor the 2nd Party No. 1 has any direct relationship with them. The Central Government amended the notification dated 17.03.1993 by issuing another notification dated 04.07.1996 restricting the operation of the notification only to the extent of loading and unloading of lime stone and dolomite into and from the trucks, dumpers, conveyers and transportation within the mine site. The prohibition imposed for engagement of contract labour for such work outside the mine area stood withdrawn. Thereafter 2nd Party No. 1 engaged HSCL for transporting Lime Stone and other materials from outside the BGD mine area to the factory. In the mean time mechanisation of the entire Mines operations was completed. Therefore, there is no contract labour system in BGD mines. Since, contract was awarded only for transportation from outside the mining area to the factory, 1st Party cannot claim replacement in that category. No work is given in the mine site to HSCL. There is no termination of the 1st Party workmen by 2nd Party No. 1. The statutory records are required to be maintained by the contractors and were maintained by the contractors themselves. The 2nd Party No. 1 being the principal employer has not maintained the same. Issue of Identity Card, Leave Eligibility Certificate, and Vocational Training does not create any relationship between the workmen and the 2nd Party No. 1. BGD mines were not operated during 1984 to 1990. From 1991 the operation was hardly 4-6 months in a year. None of the officers of the 2nd Party No. 1 supervised the work of contract workers. They are not entitled to be absorbed as regular employees. At the time of termination there were only 12 contract workers not 130 workers as claimed.

6. 2nd Party No. 2 / Sudhir Transport Limited has stated that while the stay order granted in W.P No. 37342/1995 was operating, the 2nd Party No. 1 called tender at Bhadigund Lime Stone Mines, the lowest bid offered by the 2nd Party No. 2 / Sudhir Transport Limited was accepted and contract was awarded. Based on the stay order the ALC granted conditional licence in favour of the 2nd Party No. 2, the contract was entered into on 30.03.1996, the agreement was for a period of 3 years. As per the agreement contract work was undertaken at Bhadigund Lime Stone under the conditional licence issued by the ALC, the 2nd Party No. 1 short closed the contract vide letter dated 21.02.1998 on the ground of *mechanization of mine activity by deploying their own employees*. Vide notice dated 07.03.1998 short closing of the contract was informed to all the workers by the 2nd Party No. 2, and they were informed that they were transferred to Kemmanagundi Iron Ore Mines where 2nd Party No. 1 was the Principal Employer; the employees were requested to report for work at Kemmanagundi mines within 3 days, but the employees did not report for work at their transferred work place. They were informed vide notice dated 17.03.1998 that in the event they failed to report for work their accounts will be settled on 30.03.1998. The contract work licence was also surrendered to the ALC.

7. Further it is stated that the Conciliation proceedings was held on 06.05.1998 and the same was attended by the President of the 1st Party Union. The conciliation ended in amicable settlement – that 2nd Party No. 2 will pay leave with full wages to all 130 employees from January to 1997 to December 1997 along with bonus for the year 1997 and wages for the month of March 1998. It was the prerogative of the 2nd Party No. 1 in short closing the contract with 2nd Party No. 2 and all the 130 workmen employed by the 2nd Party No. 2 had taken their full and final settlement. There is no employer and employee relationship between the workmen and 2nd Party No. 2. The reference in the schedule does not sustain in the eye of law. When there is no termination of employees the action of the Management cannot be termed as illegal or arbitrary.

8. Each of the parties placed their evidence in support of their respective stands by examining one witness each.

One behalf of the 1st Party one of the concerned workman/Vice President of the 1st Party Union was the witness. During the cross examination he admitted that W.P No. 54179/2003 was filed on behalf of 130 workmen; about 16 to 18 of the 1st Party workmen are now expired. It was further elicited that prior to M/s. Sudhir Transport Limited Sh. Subhash Chand Jain was the contractor; the union gave representation to ALC(C) to set up their claims with M/s. Sudhir Transport Limited, consequent upon which conciliation was initiated.

The Senior Manager (Mines and RM) was the witness for 2nd Party No. 1 / Principal Employer.

On behalf of 2nd Party No. 2 / Contractor, their Personnel Officer was the witness.

9. The scope of adjudication of a reference is confined to the schedule referred for adjudication. A segmentation of the schedule referred results as follows:

(i) The Union has raised issue on behalf of 130 contract workmen.

(ii) The absorption and regularisation of contract workmen as permanent workmen of the principal employer is the demand.

(iii) Their termination on 09.03.1998 is by both the principal employer and the contractor pursuant to a letter of 21.02.1998.

(iv) On the abolition of the Contract Labour System by the Central Government vide notification of 17.03.1993 the above demand is placed.

(v) The burden is on the 1st Party to prove that the termination is illegal, irregular, mala fide, arbitrary and unsustainable.

10. It is to be noted that the letter of 21.02.1998 being the source on which the workmen are said to have been terminated said letter is not marked in evidence by either of the parties.

11. The first ground of attack on the claim is, on the validity of the espousal. It is pointed out by the 2nd Party that though WW-1 during cross examination had admitted that they have maintained the Register of their members and also the resolution passed in favour of contract workers, same was not produced, though the 2nd Party called for production of the said document. Ex M-23 which they project as the resolution of 18.01.1998 wherein they resolved to take up the grievance of contract employees, no such resolution can be found in Ex M-23 about a specific resolution being taken to espouse the cause of the 1st Party workmen. That apart the union was registered on 09.02.1998 and much before that resolution is passed on 18.01.1998, hence, it cannot be believed that there was a proper espousal of the dispute.

12. Ex W-1 is said to be the authorisation on the basis of which WW-1 had deposed in the matter; the veracity of which is doubted by the 2nd Party. On a reading of this document, the President had authorised WW-1 only to contact their advocate on his behalf and respond to the queries by the advocate. Definitely this authorisation is not to depose on behalf of the President of the Union in the reference case CR 06/2006.

13. WW-1 has admitted during his cross examination that they had raised the dispute before the Conciliation Officer against Sh. Subhash Chandra Jain a licensed contractor. Having raised the dispute against the previous contractor, the fate of the said conciliation is not made known by him. Though he denied the suggestion that the workmen had received their terminal benefits from the said contractor, the documents Ex M-9 and Ex M-10 speak for themselves in this aspect. The number of workers whose matter is said to have been espoused by the union is not certain. As per the affidavit evidence of WW-1, the number of employees is 137. The tone of his cross-examination evidence is also to the effect that they have espoused the cause of 137 workmen. But as per schedule to the reference, the number of concerned workmen is 130. He was not able to clarify the discrepancy between 130 and 137. The list of concerned workmen is produced by the 1st Party as Ex W-4 pertaining to 137 workmen.

14. There is no gain say to the position of law as settled by Apex Court in the matter of SAIL and others (Supra) there cannot be any automatic absorption of contract workers on Abolition of Contract Labour System in the establishment, it was incumbent on the 1st Party to demonstrate that the contract between the principal employer and the contractor, was only sham and a make believe document, though they were the employees working directly under the supervision of the principal employer / 2nd Party No. 1. The documentary evidence produced by them in this aspect is Training Certificates of some of the workmen, the Identity Cards, the Leave Entitlement Card pertaining to 3 of them and 91 Employment Cards. None of these documents are convincing enough to link the 1st Party workmen to the 2nd Party No.1. As such they are not seeking any relief from the 2nd Party No. 2 / the contractor. The evidence of the 2nd Party No. 2 adduced through MW-1 remains intact wherein he stated that after the contract between the 2nd Party No. 1 and 2

came to be closed, they offered alternative job to the workmen and asked to report to Kemmanagundi Iron Ore Mines within 48 hours, otherwise their accounts would be closed. The employees since did not report at the transferred place they were informed to collect their amount, otherwise the amount would be deposited with ALC(C) Hubli, the licence was surrendered and Form VI-A was submitted under Contract Labour (Regulation and Abolition) Act, notice of completion of contract work assigning the reason as contract short closed by the Principals VISL w.e.f 08.03.1998 was shown. In turn the ALC convened the meeting of the parties on 21.04.1998, which was participated by the President of the Union and the conciliation ended in amicable settlement. Infact, there was no termination at all, the malafides of which is canvassed by the 1st Party.

15. Having admitted that the 2nd Party No. 2 as their employer who was answerable to them, now it does not lay in the mouth of the 1st Party to make fresh claim against the principal employer. It cannot be understood how the training given to the 1st Party workmen as per the Mining rules would entitle the workmen to claim themselves as the employees of the principal employer. The 2nd Party No.1 admits that under the guise interim order passed by the Hon'ble High Court whereby they had challenged the notification of the Central Government (prohibiting employment of contract labour or certain activities and transportation, loading and unloading of certain raw material from the Mine site to factory) they engaged the services of the 2nd Party No. 2. Subsequently they withdrew the petition and also terminated the contract. The terms of contract is clear in itself that it was for a period of 3 years from the date of starting i.e. 30.03.1996 and it was for the contractor to take care of the legal problems during the contract work. The contract came to an end vide notice of the 2nd Party dated 21.02.1998. The legality or otherwise of the contract is not the question to be probed here. The dispute is raised consequent upon abolition of contract labour system in 2nd Party. There is uncertainty in the stand of the 1st Party and in consistency between their pleading and proof. Moreover, none of the workmen seem to have authorised WW-1 to depose on their behalf.

16. There is no gain say to the fact that the 2nd Party No. 1 ran into loss and their work force is scaled down. Even otherwise if they violated the provisions of CLRA Act, the penalty is contemplated under the said Act at Chapter VI. That is not the concern of the 1st Party.

17. The fact that came into existence a valid and real contract between the 2nd Party No. 1 and 2 established with documentary proofs like Tender Notification Ex M-18, Contract / Agreement Ex M-11, Short Closure of the Contract vide Ex M-5, Surrender of Licence Ex M-6 under the CLRA Act, proceedings held before the Conciliation Officer is Ex M-9 and Compliance Report of the Terms of Settlement was reported by the contractor to the ALC vide Ex M-10. This piece of evidence would impress that there was no such *illegal, irregular, mala fide, arbitrary motives on the part of the 2nd Party No. 1 and 2 to disembrace the workmen.*

18. Under the provisions of Chapter V and VI of the CLRA Act, the principal employer is obliged to ensure scrupulous compliance of all the obligations which the contractor owes to his employees under the said act and the principal employer thereafter is entitled to recover the costs from the Bills of the contractor. The benefits extended by the 2nd Party No. 1 to the 1st Party workmen if any, does not raise them to the status of a workman of Principal employer. Having accepted the terminal benefits from the 2nd Party No. 1 and having not challenged the fairness of the settlement there is no relationship between 1st Party workmen with either of the 2nd Party No. 1 and 2. The statement of the 2nd Party that after Abolition of the Contract System, they mechanised the work and deployed their own employees goes unchallenged. WW-1 has admitted that Bhadigund Mine is a Open Caste Mine and is located in the forest area of Malnad; there cannot be mining work during raining season due to heavy down pour. As per the contention of the 2nd Party during rainy season they used to get the mined material which was already stocked outside the mining area of BGD mines and the same was transported to the factory premises. That meets the contention of the 1st Party that mining was a work of permanent and perennial in nature.

19. The evidence adduced by WW-1 is hypothetical and insufficient to accept their demand that they are the workmen of 2nd Party No. 1, entitled to seek regularisation of their service.

20. Learned counsel for the 1st Party has sought benefit of the following judgments in their favour:

a) AIR 2018 Supreme Court 3902, Food Corporation of India vs General Secretary, FCI India Employees Union and others with Food Corporation of India vs Workmen through the Convener and another.

b) AIR 2018 Supreme Court 3589, Narendra Kumar Tiwari and others. Etc. vs State of Jharkhand and others. Etc.

The first of the above, pertains to the claim of workman for regularisation of service they rendered with Food Corporation India. But the Food Corporation India / whom they alleged as their employer contended that they are the

employees of the Contract Labour Society and cannot be considered as employees for regularisation. But the 2nd Party had not adduced evidence before the Industrial Tribunal in furtherance of their case. That gave way to invoke adverse inference against them. On facts also it was found that the contract between Food Corporation India and Contract Labour Society though had expired, employees had continued to work with the Food Corporation India and were performing work of perennial nature and were paid directly by Food Corporation India. Hence, the CGIT had passed Award in favour of the workmen and same was upheld upto the Apex Court. But the circumstance in the present case stands distinguished. There is crystal clear documentary proof that as soon as the contract between the contractor and the principal employer came to be concluded the workers since had no work at Bhadagundi Mines area they were requested to report to Kemmannagundi Mines. After settling their dispute with their employer /2nd Party No. 2 / M/s. Sudhir Transport Ltd. / Contractor, they are seeking relief from the principal employer which is neither legal nor justified.

The second of the above judgment is not emerging from Industrial adjudication. It was under the Rules of Regularisation framed by the State Government pertaining to Contract employees, temporary employees etc. Hence said judgment is of no relevance for the present case.

21. In the light of the above discussion the finding is, the 130 contract workmen are not terminated by either of the 2nd Parties i.e. The Principal Employer Visveswaraya Iron and Steel Plant Limited or the Contractor M/s. Sudhir Transport Limited. No such letter dated 21.02.1998 is shown to exist which culminated in the alleged termination. The demand of the 1st Party workmen after settling their dues with their employer M/s Sudhir Transport Limited seeking absorption regularisation with Principal Employer VISL is neither legal nor justified. Hence, the 1st Party workmen are not entitled for any relief.

AWARD

The reference is rejected

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 30th October 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 20 नवम्बर, 2019

का.आ. 2044.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 67/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.11.2019 को प्राप्त हुआ था।

[सं. एल-29012/77/2008-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th November, 2019

S.O. 2044.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 67/2008) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 07.11.2019.

[No. L-29012/77/2008-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 29TH OCTOBER 2019

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 67/2008

I Party

Smt. D.L. Sharadamma,
W/o Late D.L. Lingappa,
Since Deceased by LR's

1a) Sh. D.L. Krishnamurthy,
S/o Late D.L. Lingappa

1b) Sh. D.L. Chandrashekar,
S/o. Late D.L. Lingappa

Jad Gadde Village,
Devangi Post, Thirthahalli Taluk,
Shimoga Distruct-577432

II Party

The Managing Director,
Mysore Minerals Limited,
No. 39, M. G Road,
BANGALORE – 560 001.

Appearance

Advocate for I Party : Mr. K T Govinde Gowda

Advocate for II Party : Mr. A K Vasanth

AWARD

The Central Government vide Order No. L-29012/77/2008-IR(M) dated 04.08.2008 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the removal from service of Smt. D.L. Sharadamma by the management of M/s. Mysore Minerals Limited w.e.f. 17.07.1998 is justified? If not, to what relief the workman is entitled to?"

1. The dispute was raised by the 1st Party workman Smt. D.L. Sharadamma, who is now expired and represented by her two sons / Class-I Legal Heirs.

The claim of the 1st Party is, she joined the service of the 2nd Party on 10.11.1971 at its Mining Unit Thirthahalli Clay Mines, Thirthahalli, Shimoga District, as a Mining worker. Her date of birth is 10.11.1945 as per the Horoscope maintained by her parents; same is accepted by the 2nd Party for the purpose of all the Statutory Records. Though she was entitled to continue in service up to 10.11.2003, on subjecting her to medical examination, the 2nd Party refused employment on 16.06.1998, on the plea that she has reached superannuation age of 58 years. The Medical Certificate is illegal and Medical Examination is not held in accordance with the Mining Rules 1955-29(C) i.e., by a doctor of the rank of Assistant Surgeon. Her signature is obtained by the 2nd Party Officials on several applications. Several of her co-workers are also terminated on the medical ground of unfitness or over age. One such co-employee namely Smt. K Dundamma preferred a Writ Petition No. 5615/2001(S-RES) before the Hon'ble High Court of Karnataka, same was allowed on 29.03.2001. The Writ Appeal No. 3460/2001 connected with 3459/2001 preferred against the said order in W.P No. 5615/2001(S-RES) came to be rejected on 12.06.2002. The Employee/Writ Petitioner prematurely retired was reinstated with back wages and continuity of service. Writ Petitions filed by similarly placed employees in Writ Petition Nos. 26101/2001 C/W W.P No. 23798/2001, 23797/2001 & 23794/2001 against the very same Management were also allowed. The Medical Reports and orders of termination were quashed with a cost payable by the Employer / Mysore Minerals Limited.

2. It is further claimed that, the action of the 2nd Party in terminating the services of the workman prematurely amounts to retrenchment within the meaning of Section 2(oo) of the I.D Act, but without following mandatory provisions of Sec 25(F)(G)(H) and (N) of I.D Act of 1947. The 2nd Party has also violated its own Certified Standing Orders i.e Mysore Minerals Limited Officers and Employees Conditions of Service, Conduct and Disciplinary Proceedings Rules/Clause, 18 & 24.The workman's Date of birth is not changed by the 2nd Party in the Statutory Records. The Dismissal order is liable to be set aside with consequential monetary benefits.

3. The counter case of the 2nd Party is,

that the dispute raised is time barred. 1st Party was given 30 days' time to prefer the appeal before the Appellate Medical Board as per rules, but she did not avail the opportunity extended to her. Inspired by the Judgments of the Hon'ble High Court in W.P No. 5615/2001 and 26101/2001, she has raised the dispute after a lapse of considerable length of time. The Medical Examination of all the employees and workers working at the Mines Unit was arranged in the year 1997-98 as per the Mines Rules 1955. A team of qualified and Senior Medical Officers from Hutti Gold Mines Limited carried out Medical Examination. She was found aged more than 58 years as per Medical Report. Hence, it was decided to terminate her from service. The 2nd Party Management relieved her from service on the ground of superannuation by settling her terminal benefits. She has received the terminal benefits i.e. EPF, gratuity, leave pension and settled the matter with the 2nd Party without any protest and without any grievance of her rights, hence has no right to raise the dispute. As on the date of reference there was no relationship of employer and employee between the parties. Hence, the reference is bad in law.

Both parties have adduced their evidence and submitted their arguments in writing.

4. On behalf of the 2nd Party their Assistant Manager was examined as a witness. Since, the workman had expired by that time there was no cross examination. However, the burden was on the 2nd Party to justify their action of termination of the workman w.e.f 17.07.1998. Though, it is true that the Legal Heirs of the deceased 1st party did not seek for recalling of MW-1 for cross examination, said fact cannot be en-cashed by the 2nd Party.

5. As per clause 18.3 of the Certified Standing Orders of the 2nd Party, the change in the date of birth as entered in the Company's Statutory Record can only be effected by a judgment of a Competent Court. Admittedly, it was an en-masse termination of employees on the ground of superannuation or physical unfitness. The Hon'ble High Court has already quashed similar Medical Certificates issued to the employees in the Judgements WP 5615/2001 DD 29.03.2001, WA 3406/01 C/W WA 3459/01 (S) DD 12.06.2002, WP No. 26101/01 C/w WP No. 23798/01, 23797/01 and 23794/01 (S-RES) DD 01.06.2006. The above Judgements hold the field as on today.

6. Except the self-serving statement of MW-1 no document is placed on record to demonstrate that the Medical Examination is conducted by the qualified Doctors in accordance with the Rule 29-B of the Mines Rules 1955. The disputed Medical Certificate is not made available by both parties. There is no documentary proof that the 1st Party was informed to prefer an appeal before the Appellate Medical Board if she was aggrieved by the Medical Report. The 2nd Party without addressing the question raised by the 1st Party workman against illegal Medical Examination would contend that having accepted the terminal benefits and having severed her relationship, her claim cannot be sustained.

7. There is no evidence as to whether change of age as per the medical certificate was intimated to the EPF Authority; there was no specific evidence regarding the age of the 1st Party as assessed by the Medical Officer. The deceased workman has lost around 5 years of service, probably for the reason that the 2nd Party suffered financial loss and was in urgency to disembrace their workforce to mitigate their hardship. Thus, they resorted to Medical Examination of the workman. The 1st Party due to ignorance, illiteracy or for want of information might not have challenged the Medical Report before the Appellate Medical Board, but that cannot legalise the action of premature superannuation / termination effected by the 2nd Party.

8. The action of the 2nd Party is not justified for another reason also that, they being the establishment having workforce exceeding thousands if were to retrench the workmen due to their financial crunch, they could not have done so, without complying the mandate of Section 25-N of the I.D Act, which they have omitted. If the refusal of employment to the workman is to be termed as retirement, it is a pre-retirement at the pleasure of the employer which is definitely illegal. If it is to be termed as retrenchment then also it is vitiated for not complying the mandatory provisions of Section 25-F,G,H and N of the I.D Act. Wherefore the action of the 2nd Party in terminating her service / premature superannuating w.e.f 17.07.1998 is neither justified nor legal.

9. Having held that the termination / premature superannuation illegal, the next question is, the relief that could be moulded in favour of the Legal Heirs of the deceased.

10. On one side there is the cause of the 1st Party workman who lost her avocation, in the mid-way of her career by curtailing her service by 5 years, on the other side there is evidentiary material that, she had accepted the terminal benefits and did not challenge her illegal removal for 10 years. There appears to be some merit in the contention of the 2nd Party that inspired by the judgment of the Hon'ble High Court in W.P No. 5615/2001 and other cases she raised the present dispute. However, a balance is to be struck between the two. The 2nd Party has to be reminded that an aggrieved workman cannot be non-suited from the reliefs available under the Welfare Legislature of the I.D Act 1947 for delaying in raising Industrial Dispute. Moreover, the reference order on its legality was not challenged by the 2nd Party before the Appropriate Forum. In the opinion of this Tribunal, ends of justice would be met by awarding a lump sum compensation of Rs. 25,000/- (Rupees Twenty Five Thousand Only) to Legal Heirs of the deceased workman Smt. D.L. Sharadamma.

AWARD

The reference is accepted

The action of the 2nd Party Management MML in terminating the services/premature superannuating of the services of late Smt. D.L. Sharadamma w.e.f. 17.07.1998 is not justified.

The 2nd Party is directed to pay Rs. 25,000/-(Rupees Twenty Five Thousand Only) to Sh. D.L. Krishnamurthy and Sh. D.L. Chandrashekar sons of the deceased 1st Party workman Smt. D.L. Sharadamma within 2 months from the date of publication of the Award in the Official Gazette, failing which the amount shall carry future interest at the rate of 6% per annum.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 29th October, 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 20 नवम्बर, 2019

का.आ. 2045.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 45/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.11.2019 को प्राप्त हुआ था।

[सं. एल-17012/19/2012-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th November, 2019

S.O. 2045.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 45/2012) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Life Insurance Corporation of India and their workman, which was received by the Central Government on 07.11.2019.

[No. L-17012/19/2012-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 31ST OCTOBER 2019

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 45/2012

I Party	**II Party**
Sh. Suresh, S/o Late. Sh. Sattaiah, No. 1682, CH-12/1A, 10th Cross, Ashokpuram, Mysore – 570 008.	The Senior Divisional Manager, LIC of India, Divisional Office, Mysore-Bangalore road, Bannimantap, Mysore – 570 015.

Appearance

Advocate for I Party : Mr. V.S. Naik

Advocate for II Party : Mr. B.V. Krishna

AWARD

The Central Government vide Order No. L-17012/19/2012-IR(M) dated 10.10.2012 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the workmen of management of Life Insurance Corporation of India, Divisional Office, Mysore represented by its Senior Divisional Manager in terminating the services of Shri Suresh S/o Late Sattaiah w.e.f. 19.08.2009 is legal and justified? What relief the workman is entitled to?"

1. The claim of the 1st Party workman is,

that he joined the service of the 2nd Party, Division Office, Mysore, during the year 1999. He was selected for the post of attendant cum care taker / sepoy. He was illegally refused employment w.e.f 19.08.2009 without a prior notice. He has rendered continuous service for almost 10 years. The 2nd Party in pursuance of the judgement passed by the Hon'ble Supreme Court of India in Civil Appeal No. 953-968 as one-time measure recruited all eligible temporary Class-IV employees who had worked for more than 5 years and were qualified after calling for applications and interviewing the successful candidates. The Management had issued the notification dated 20.05.2011, calling for applications from the eligible candidates and last date for filing the application was 03.06.2011. The 1st Party had required qualification and was within the age limit, but the 2nd Party refused to receive his application. He approached the Hon'ble High Court of Karnataka in W.P No. 19040-41/2011(L-Res), his Writ Petition came to be dismissed. He is entitled for appointment in view of the Law declared by Hon'ble Supreme Court in Anil Kumar's case. The 2nd Party has considered several other daily wagers / temporary employees and continued them in employment but they have discriminated him arbitrarily. Refusal of employment to him amounts to retrenchment without following the mandatory provisions of Law.

2. The 2nd Party contesting the claim countered thus,

he was not at all appointed as their Sub Staff, he was engaged as daily wage worker. He was paid conveyance of Rs. 25.00 for visiting local shop to purchase stationeries etc., he was paid sum of Rs 75.00 as daily wage. He worked from May 2001 to August 2009, due to his misconduct he was discontinued in August 2009. He is not a workman under the Corporation and was not on rolls as on 18.01.2011. He was not eligible for writing limited recruitment test. The order of the Hon'ble Supreme Court is not applicable to him. The 2nd Party called for certificate from the Officers for those who worked as temporary sub staff for more than 5 years and who were on rolls as on 18.01.2011; the 1st Party was not on the rolls as on 18.01.2011.

Both parties have adduced evidence and submitted their written argument.

3. On his own showing, the prayer of the 1st Party seeking direction to the 2nd Party (when they refused to accept his application for taking the limited written examination) is dismissed. The limited scope of this reference is the legality or otherwise of his termination w.e.f 19.08.2009.

MW1 in his affidavit evidence averred to the effect that, because of the misconduct committed by him he is removed; since, he is not a sub staff but a daily wager, memo or prior notice was not issued to him.

During the course of cross examination, MW1 admitted the confronted to him; it was ranking list of the employees who were promoted to the cadre of record clerk. But admission of the said document is of no avail for us for the simple reason that, he could not take the examination though, he aspired for that. While 1st Party claims that he has rendered 10 years of continuous service, 2nd Party would counteract that he worked between May 2001 to August 2009. However, there is no documentary proof to accept contention of either of them about number of years of his service. Still one fact remains settled i.e. he worked continuously till his removal on 19.08.2009. It is not their case that, before removing him from service either they had issued 3 months' notice or notice pay as mandated by Section 25-F of 'the Act'. The dispute is raised by him not immediately after refusal of employment but after the Judgement passed by the Hon'ble High Court on 13.06.2011, dismissing his W.P No. 19040-41/2011, and the said has become final. Having served for continuously as daily wager from the year 1999 till the year 2009, definitely he falls under the category of the workman as contemplated by Section 2(S) of 'the Act' and his removal on the allegation of misconduct but without holding enquiry on the allegation amounts to retrenchment as contemplated by Section 2(oo) of 'the Act'. Retrenchment since not followed by mandatory procedure of Section 25-F of 'the Act', the refusal of employment is vitiated and illegal.

4. Having held as above, the next question is moulding the relief which can neutralise the injustice done to the workman by the action of the Management. The 1st Party has placed reliance on the judgement of the Apex Court in the matter of *Punjab Land Dvt. and Reclamation Corporation Ltd, Chandigarh etc., and several others vs Presiding Officer, Labour Court, Chandigarh etc., and several others* and also the order passed by our Hon'ble High Court in the matter of *Zonal Manager Bank of India vs M.H. Shank*arappa in WP No. 32344/2017 (L-RES) DD 28.07.2017. The first

Judgement is by the Constitution Bench of the Apex Court thereby, a common order was passed pertaining to eight appeals by the Employer Corporation.

The Apex Court delt in detail the scope and extent of Section 2(oo) of ID Act and held that, *'...''retrenchment" means the termination by the employer of the service of workman for any reason what so ever expect those expressly excluded in the Section.....'* Thus, confirmed the Award of the Labour Court whereby, reinstatement of workmen who were terminated without following the procedure contemplated by Section 25-F of the ID Act was ordered.

In the second of the above Judgement, the Hon'ble High Court dismissed the petition challenging the Award of Labour Court pertaining to a workman appointed as a Sub Staff to the vacant post of the Sub Staff after due process of employment; said workman after serving for nearly 10 years was denied employment by the Bank. Having found that, the workman had worked against a clear vacancy and the workman continued from 1992 till 2004 in the vacancy the Hon'ble High Court observed that *"…. once the Bank has admitted …. that vacancy existed and once the Bank has admitted that Respondent workman was found to be honest, sincere and hardworking person, then the learned Tribunal was justified in directing the Bank to regularise the service of the Respondent / workman…"* the circumstance on hand stand distinguished from that of the above two cases. The workman herein has not worked as a temporary Sub Staff against a vacant post. The task of Regularisation of the service of the Sub Staffs is already complied by the 2nd Party as per the direction of the Apex Court. The 2nd Party being a Central Government undertaking cannot be called upon to violate the Recruitment Rules governing them. The direction of the Supreme Court in Civil Appeal No. 953-968 was in reference to a category of the Sub Staff who were on the rolls of 2nd Party as on 18.01.2011 and it was one-time measure and not to run perpetually.

In the given circumstance, monetary compensation in lieu of the service rendered by him as a daily wager from May 2001 to August 2009 can only be the appropriate relief of the workman. Arithmetical calculation of the retrenchment compensation on basis of this daily wage at Rs. 75/- will not compensate the irregularity committed by the 2nd Party at this length of time. Instead, a lump sum compensation of Rs. 75,000/-(Rupees Seventy Five Thousand Only) in respect of his service from May 2001 to August 2009 would serve the ends of Justice being met.

AWARD

The reference is accepted

The action of the Management of Life Insurance Corporation of India, Divisional Office, Mysore, in terminating the services of the 1st Party workman Sh. Suresh S/o Sattaiah w.e.f 19.08.2009 without following the mandatory provision contemplated by Section 25-F of the Act is illegal.

The 2nd Party is directed to pay monetary compensation of Rs. 75,000/- (Rupees Seventy Five Thousand Only), in lieu of his entitlement for retrenchment compensation towards the service rendered by him from May 2001 to August 2009, within 60 days from the date of publication of this Award otherwise the amount shall carry interest at the rate of 6 % per annum.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 31st October, 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 20 नवम्बर, 2019

का.आ. 2046.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 39/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.11.2019 को प्राप्त हुआ था।

[सं. एल-29012/43/2006-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th November, 2019

S.O. 2046.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 39/2007) of the Central Government Industrial Tribunal/Labour

Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 07.11.2019.

[No. L-29012/43/2006-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRUIBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 25TH OCTOBER 2019

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 39/2007

I Party	**II Party**
Sh. Shivananje Gowda, S/o Late Sh. Nanjegowda, Since Deceased by LR's	The Managing Director, Mysore Minerals Limited, No. 39, M. G Road, BANGALORE – 560 001.

1a) Smt. Lakshmamma,
W/o Late Shivananje Gowda

1b) Smt. Indramma,
D/o. Late Shivananje Gowda

1c) Sh. Kumara Swamy,
S/o. Late Shivananje Gowda

1d) Smt. Vanajakshi,
D/o. Late Shivananje Gowda

All are residing at
Haladahalli, Bageval Post,
Gandasi Hobli, Arasikere Taluk,
Hassan Dist - 573 211.
Karnataka.

Appearance

Advocate for I Party : Mr. K T Govinde Gowda

Advocate for II Party : Mr. L. Venkatarama Reddy

AWARD

The Central Government vide Order No. L-29012/43/2006-IR(M) dated 06.03.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the management of Mysore Minerals Limited is justified in terminating the services/ premature superannuating of the services of Sri. Shivananje Gowda w.e.f. 29.06.1998? If not, to what relief the workman is entitled to?"**

1. The dispute was raised by the 1st Party workman Sh. Shivananje gowda, who is now expired and represented by his Wife and 3 children - his Class-I Legal heirs.

The claim of the 1st Party is, he joined the service of the 2nd Party on 04.10.1980 at its Mining Unit at Byrapura Chromite Mines, Channaraypatna Taluk, Hassan District as a Mining worker. His date of birth is 04.10.1950 as per the Horoscope maintained by his parents; same is accepted by the 2nd Party for the purpose of all the Statutory Records. Though he was entitled to continue in service up to 04.10.2008, on subjecting him to a medical examination, the 2nd Party refused employment on 29.06.1998 on the ground he has reached superannuation. The Medical Certificate is illegal, and Medical Examination is not held in accordance with the Mining Rules 1955-29(C) i.e., by a doctor of the rank of

Assistant Surgeon. His signature is obtained by the 2nd Party Officials on several applications. Several of his co-workers are also terminated on the medical ground of unfitness or over age. One such co-employee namely Smt. K Dundamma preferred a Writ Petition No. 5615/2001 (S-RES) before the Hon'ble High Court of Karnataka, same was allowed on 29.03.2001. The Writ Appeal No. 3460/2001 connected with 3459/2001 preferred against the said order in W.P No. 5615/2001(S-RES) came to be rejected on 12.06.2002. The Employee/ Writ Petitioner prematurely retired was reinstated with back wages and continuity of service. Writ Petitions filed by similarly placed employees in Writ Petition Nos. 26101/2001 C/W W.P No. 23798/2001, 23797/2001 & 23794/2001 against the very same Management were also allowed. The Medical Reports and orders of termination were quashed with a cost payable by the Employer/ Mysore Minerals Limited.

2. It is further claimed that, the action of the 2nd Party in terminating the services of the workman prematurely amounts to retrenchment within the meaning of Section 2(oo) of the I.D Act, but without following mandatory provisions of Sec 25(F)(G)(H) and (N) of I.D Act of 1947. The 2nd Party has also violated its own Certified Standing Orders i.e. Mysore Minerals Limited Officers and Employees Conditions of Service, Conduct and Disciplinary Proceedings Rules/Clause, 18 & 24. The workman's Date of birth is not changed by the 2nd Party in the statutory records. The Dismissal order is liable to be set aside with consequential monetary benefits.

3. The counter case of the 2nd Party is,

that the dispute raised is time barred. 1st Party was given 30 days' time to prefer the appeal before the Appellate Medical Board as per rules, but he did not avail the opportunity extended to him. Inspired by the judgments of the Hon'ble High Court in W.P No. 5615/2001 and 26101/2001, he has raised the dispute after a lapse of considerable length of time. The Medical Examination of all the employees and workers working at the Mines Unit was arranged in the year 1997-98 as per the Mines Rules 1955. A team of qualified and Senior Medical Officers from Hutti Gold Mines Limited carried out Medical Examination. He was found aged more than 58 years as per Medical Report. Hence, it was decided to terminate him from service. The 2nd Party Management relieved him from service on the ground of superannuation by settling his terminal benefits. He has received the terminal benefits i.e. EPF, gratuity, leave pension and settled the matter with the 2nd Party without any protest and without any grievance of his rights, hence has no right to raise the dispute. As on the date of reference there was no relationship of employer and employee between the parties. Hence, the reference is bad in law. He is gainfully employed and earning salary.

Both parties have adduced their evidence and submitted their arguments in writing.

4. On behalf of the 2nd Party their Assistant Manager was examined as a witness. Through him attested copy of the 'B Register' pertaining to the 1st Party was marked as Ex M-1. Accordingly his date of Birth is still maintained as 04.10.1950. During cross examination, the witness identified the Photostat copies of the documents confronted to him as Ex W-1 to Ex W-5. Ex W-1 is the termination order stating that on his medical examination he is found unsuitable to work as per Form-O issued to him; he was given opportunity to seek re-examination within 80 days; but he did not seek for such re-examination. Ex W-2 is the judgment of the Hon'ble High Court in the matter of Smt. K. Dundamma vs MML (supra). Ex W-3 is the judgment of the Division Bench of the Hon'ble High Court in rejecting the appeal preferred by the Management challenging the order at Ex W-2. Ex W-4 is the common order passed by the Hon'ble High Court in the Writ Petitions filed by similarly placed employees of the 2nd Party whereby the order of termination which were under challenge were all quashed. Ex W-5 is the office order dated 22.08.2008 extending the superannuation of its employees from 58 years to 60 years.

It was brought out during the cross examination of the witness that no safety measures and welfare provisions as required by the Mines Rules are provided for the Mining workers; in the year 1995-1996 the 2nd Party entrusted the Mining work to a Private Company and suffered loss of 21 crores in Shimoga and Hassan Districts; having suffered loss they decided to reduce the number of workers and Medical Examination of the mining workers was resorted. The 2nd Party has its own Certified Standing Order i.e., Mysore Mineral Limited Officers and Employees' Conditions of Service Conduct and Disciplinary Proceedings Rules.

5. As per clause 18.3 of the Certified Standing Orders of the 2nd Party, the change in the date of birth as entered in the Company's Statutory Record can only be effected by a judgment of a Competent Court; now the age of the employees of the company is enhanced to 60 years adopting the policy of the State Government enhancing the age of superannuation from 58 to 60 years. Had if the 1st Party continued in service up to his superannuation, he would have been in service up to October 2010. Admittedly it was anen-masse termination of employees on the ground of superannuation or physical unfitness. The Hon'ble High Court has already quashed similar Medical Certificates issued to the employees.

6. Except the self-serving statement of MW-1 no document is placed on record that the Medical Examination is conducted by the qualified Doctors in accordance with the Rule 29-B of the Mines Rules 1955. The disputed Medical Certificate is not made available by both parties. There is no documentary proof that the 1st Party was informed to prefer an appeal before the Appellate Medical Board if he was aggrieved by the Medical Report. The 2nd Party without

addressing the question raised by the 1st Party workman against illegal Medical Examination would contend that having accepted the terminal benefits and having severed his relationship, his claim cannot be sustained.

7. MW-1 during cross examination though admitted that there are Statutory Reports like, B-register and Provident Fund Register (pertaining to the employees) no such document was produced and the witness was ignorant as to whether change of age as per the medical certificate was intimated to the EPF Authority; He further admitted that the termination order was not annexed with the medical certificate which is in dispute in this reference. There was no evidence from the 2nd Party regarding the age of the 1st Party as assessed by the Medical Officer or the opinion of the Medical Officer about his medical unfitness. The 1st Party due to ignorance, illiteracy or for want of information might not have challenged the Medical Report before the Appellate Medical Board, but that cannot legalise the action of premature superannuation/ termination effected on the basis of medical report which was basically not in consonance with the procedure contemplated in rules (supra) applicable to them.

8. The action of the 2nd Party is not justified for another reason also that, they being the establishment having workforce exceeding thousands if were to retrench the workmen due to their financial crunch, they could not have done so, without complying the mandate of section 25-N of the I.D Act, which they have omitted. If the refusal of employment to the workman is to be termed as retirement, it is a pre-retirement at the pleasure of the employer which is definitely illegal. If it is to be termed as retrenchment then also it is vitiated for not complying the mandatory provisions of section 25-F, G, H and N of the I.D Act. Wherefore the action of the 2nd Party in terminating his service / premature superannuating w.e.f 29.06.1998 is neither justified nor legal.

9. Having held that the termination / premature superannuation illegal, the next question is, the relief that could be moulded in favour of the Legal Heirs of the deceased. The deceased workman has filed his affidavit evidence stating that except his employment with the 2nd Party he had no other source of income or alternate employment.

10. On one side there is the cause of the 1st Party workman who lost his avocation, in the mid-way of his career by curtailing his service by 12 years, on the other side there is evidentiary material that, he had accepted the terminal benefits and did not challenge his illegal removal for 9 years. There appears to be some merit in the contention of the 2nd Party that, inspired by the judgment of the Hon'ble High Court in W.P No. 5615/2001 and other cases he raised the present dispute. However, a balance is to be struck between the two. The 2nd Party has to be reminded that an aggrieved workman cannot be non-suited from the reliefs available under the Welfare Legislature of the I.D Act 1947 for delaying in raising Industrial Dispute. Moreover, the reference order, on its legality was not challenged by the 2nd Party before the Appropriate Forum. In the opinion of this Tribunal, ends of justice would be met by awarding a lump sum compensation of Rs. 1,00,000/- (Rupees One lakh Only) to Smt. Lakshmamma Wife of late Sh. Shivananje Gowda since all their children are majors.

AWARD

The reference is accepted

The action of the 2nd Party Management MML in terminating the services / premature superannuating of the services of late Sh. Shivananje Gowda w.e.f. 29.06.1998 is not justified.

The 2nd Party is directed to pay Rs. 1,00,000/- (Rupees One Lakh Only) to Smt. Lakshmamma Wife of deceased 1st Party workman Sh. Shivananje Gowda within 2 months from the date of publication of the Award in the Official Gazette, failing which the amount shall carry future interest at the rate of 6% per annum.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 25th October, 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 20 नवम्बर, 2019

का.आ. 2047.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 37/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.11.2019 को प्राप्त हुआ था।

[सं. एल-29012/41/2006-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th November, 2019

S.O. 2047.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 37/2007) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 07.11.2019.

[No. L-29012/41/2006-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRUIBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 25TH OCTOBER 2019

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 37/2007

I Party	**II Party**
Sh. N. Doddegowda, S/o Late Somegowda, Since Deceased by LR's	The Managing Director, Mysore Minerals Limited, No. 39, M. G Road, BANGALORE – 560 001.

1a) Smt. Radha,
D/o. Late N. Doddegowda

1b) Sh. Jayaramu,
S/o. Late N. Doddegowda

Halada Halli,
Bageval Village and Post,
Gandasi Hobli, Arasikere Taluk,
Hassan Dist - 573 211

Appearance

Advocate for I Party : Mr. K T Govinde Gowda

Advocate for II Party : Mr. L. Venkatarama Reddy

AWARD

The Central Government vide Order No. L-29012/41/2006-IR(M) dated 06.03.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the management of Mysore Minerals Limited is justified in terminating the services/premature superannuating of the services of Sri. N. Doddegowda w.e.f. 02.06.1998? If not, to what relief the workman is entitled to?"

1. The dispute was raised by the 1st Party workman Sh. Doddegowda, who is now expired and represented by his 2 children – his Class-I Legal heirs.

The claim of the 1st Party is, he joined the service of the 2nd Party on 03.05.1984 at its Mining Unit at Jamboor Chromite Mines and thereafter was transferred to Haladahalli Chromite Mines, Arasikere Taluk, Hassan District as a Mining worker. His date of birth is 03.05.1949 as per the Horoscope maintained by his parents; same is accepted by the 2nd Party for the purpose of all the Statutory Records. Though he was entitled to continue in service up to 03.05.2007, on subjecting him to a medical examination, 2nd Party refused employment on 02.06.1998 on the ground he has reached superannuation. The Medical Certificate is illegal, and Medical Examination is not held in accordance with the Mining Rules 1955-29(C) i.e., by a doctor of the rank of Assistant Surgeon. His signature is obtained by the 2nd Party Officials on several applications. Several of his co-workers are also terminated on the medical ground of unfitness or over age. One such co-employee namely Smt. K Dundamma preferred a Writ Petition No. 5615/2001 (S-RES) before the Hon'ble

High Court of Karnataka, same was allowed on 29.03.2001. The Writ Appeal No. 3460/2001 connected with 3459/2001 preferred against the said order in W.P No. 5615/2001(S-RES) came to be rejected on 12.06.2002. The Employee/ Writ Petitioner prematurely retired was reinstated with back wages and continuity of service. Writ Petitions filed by similarly placed employees in Writ Petition Nos. 26101/2001 C/W W.P No. 23798/2001, 23797/2001 & 23794/2001 against the very same Management were also allowed. The Medical Reports and orders of termination were quashed with a cost payable by the Employer / Mysore Minerals Limited.

2. It is further claimed that, the action of the 2nd Party in terminating the services of the workman prematurely amounts to retrenchment within the meaning of Section 2(oo) of the I.D Act, but without following mandatory provisions of Sec 25(F)(G)(H) and (N) of I.D Act of 1947. The 2nd Party has also violated its own Certified Standing Orders i.e. Mysore Minerals Limited Officers and Employees Conditions of Service, Conduct and Disciplinary Proceedings Rules/Clause, 18 & 24. The workman's Date of birth is not changed by the 2nd Party in the statutory records. The Dismissal order is liable to be set aside with consequential monetary benefits.

3. The counter case of the 2nd Party is,

that the dispute raised is time barred. 1st Party was given 30 days' time to prefer the appeal before the Appellate Medical Board as per rules, but he did not avail the opportunity extended to him. Inspired by the judgments of the Hon'ble High Court in W.P No. 5615/2001 and 26101/2001, he has raised the dispute after a lapse of considerable length of time. The Medical Examination of all the employees and workers working at the Mines Unit was arranged in the year 1997-98 as per the Mines Rules 1955. A team of qualified and Senior Medical Officers from Hutti Gold Mines Limited carried out Medical Examination. He was found aged more than 58 years as per Medical Report. Hence, it was decided to terminate him from service. The 2nd Party Management relieved him from service on the ground of superannuation by settling his terminal benefits. He has received the terminal benefits i.e. EPF, gratuity, leave pension and settled the matter with the 2nd Party without any protest and without any grievance of her right, hence has no right to raise the dispute. As on the date of reference there was no relationship of employer and employee between the parties. Hence, the reference is bad in law. He is gainfully employed.

Both parties have adduced their evidence and submitted their arguments in writing.

4. On behalf of the 2nd Party their Assistant Manager was examined as a witness. Through him attested copy of the 'B Register' pertaining to the 1st Party was marked as Ex M-1. Accordingly his date of Birth is still maintained as 03.05.1949. During the cross examination, the witness identified the Photostat copies of the documents confronted to him as Ex W-1 to Ex W-6. Ex W-1 is the Photostat copy of the application submitted by the 1st Party to the Employees Welfare Fund Trust of the 2nd Party indicating his Date of Birth as 03.05.1949. Ex W-2 is the termination order stating that on his medical examination he is found unsuitable to work as per Form-O issued to him; he was given opportunity to seek re-examination within 80 days; but he did not seek for such re-examination. Ex W-3 is the judgment of the Hon'ble High Court in the matter of Smt. K. Dundamma vs MML (supra). Ex W-4 is the judgment of the Division Bench of the Hon'ble High Court in rejecting the appeal preferred by the Management challenging the order at Ex W-2. Ex W-5 is the common order passed by the Hon'ble High Court in the Writ Petitions filed by similarly placed employees of the 2nd Party whereby the order of termination which were under challenge were all quashed. Ex W-6 is the office order dated 22.08.2008 extending the superannuation of its employees from 58 years to 60 years.

It was brought out during the cross examination of the witness that no safety measures and welfare provisions as required by the Mines Rules are provided for the Mining workers; in the year 1995-1996 the 2nd Party entrusted the Mining work to a Private Company and suffered loss of 21 crores in Shimoga and Hassan Districts; having suffered loss they decided to reduce the number of workers and Medical Examination of the mining workers was resorted. The 2nd Party has its own Certified Standing Order i.e., Mysore Mineral Limited Officers and Employees' Conditions of Service Conduct and Disciplinary Proceedings Rules.

5. As per clause 18.3 of the Certified Standing Orders of the 2nd Party, the change in the date of birth as entered in the Company's Statutory Record can only be effected by a judgment of a Competent Court; now the age of the employees of the company is enhanced to 60 years adopting the policy of the State Government enhancing the age of superannuation from 58 to 60 years. Had if the 1st Party continued in service up to his superannuation, he would have been in service up to 2007. Admittedly it was an en-masse termination of employees on the ground of superannuation or physical unfitness. The Hon'ble High Court has already quashed similar Medical Certificates issued to the employees.

6. Except the self-serving statement of MW-1 no document is placed on record that the Medical Examination is conducted by the qualified Doctors in accordance with the Rule 29-B of the Mines Rules 1955. The disputed Medical Certificate is not made available by both parties. There is no documentary proof that the 1st Party was informed to prefer an appeal before the Appellate Medical Board if he was aggrieved by the Medical Report. The 2nd Party without addressing the question raised by the 1st Party workman against illegal Medical Examination would contend that having accepted the terminal benefits and having severed his relationship, his claim cannot be sustained.

7. MW-1 during cross examination though admitted that there are Statutory Reports like, B-register and Provident Fund Register (pertaining to the employees) no such document was produced and the witness was ignorant as to whether change of medical certificate was intimated to the EPF Authority; he further admitted that the termination order was not annexed with the medical certificate which is in dispute in this reference. There was no evidence from the 2nd Party regarding the age of the 1st Party as assessed by the Medical Officer or the opinion of the Medical Officer about his medical unfitness. The 1st Party due to ignorance, illiteracy or for want of information might not have challenged the Medical Report before the Appellate Medical Board, but that cannot legalise the action of premature superannuation/ termination effected on the basis of medical report which was basically not in consonance with the procedure contemplated in the rules (supra) applicable to them.

8. The action of the 2nd Party is not justified for another reason also that, they being the establishment having workforce exceeding thousands if were to retrench the workmen due to their financial crunch, they could not have done so, without complying the mandate of section 25-N of the I.D Act, which they have omitted. If the refusal of employment to the workman is to be termed as retirement, it is a pre-retirement at the pleasure of the employer which is definitely illegal. If it is to be termed as retrenchment then also it is vitiated for not complying the mandatory provisions of section 25-F, G, H and N of the I.D Act. Wherefore the action of the 2nd Party in terminating his service / premature superannuating w.e.f 02.06.1998 is neither justified nor legal.

9. Having held that the termination / premature superannuation illegal, the next question is, the relief that could be moulded in favour of the Legal Heirs of the deceased. The deceased workman has filed his affidavit evidence stating that except his employment with the 2nd Party he had no other source of income or alternate employment.

10. On one side there is the cause of the 1st Party workman who lost his avocation, in the mid-way of his career by curtailing his service by 9 years, on the other side there is evidentiary material that, he had accepted the terminal benefits and did not challenge his illegal removal for 9 years. There appears to be some merit in the contention of the 2nd Party that, inspired by the judgment of the Hon'ble High Court in W. P. No. 5615/2001 and other cases he raised the present dispute. However, a balance is to be struck between the two. The 2nd Party has to be reminded that an aggrieved workman cannot be non-suited from the reliefs available under the Welfare Legislature of the I.D. Act 1947 for delaying in raising Industrial Dispute. Moreover, the reference order, on its legality was not challenged by the 2nd Party before the Appropriate Forum. In the opinion of this Tribunal, ends of justice would be met by awarding a lump sum compensation of Rs. 80,000/- (Rupees Eighty Thousand Only) to Smt. Radha Daughter and Sh. Jayaramu son of deceased 1st Party workman Sh. Doddegowda.

AWARD

The reference is accepted

The action of the 2nd Party Management MML in terminating the services/premature superannuating of the services of late Sh. N. Doddegowda w.e.f. 02.06.1998 is not justified.

The 2nd Party is directed to pay Rs. 40,000/- each to Smt. Radha Daughter and Sh. Jayaramu son of deceased 1st Party workman Sh. Doddegowda within 2 months from the date of publication of the Award in the Official Gazette, failing which the amount shall carry future interest at the rate of 6% per annum.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 25th October, 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 20 नवम्बर, 2019

का.आ. 2048.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध के निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 32/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.11.2019 को प्राप्त हुआ था।

[सं. एल-29012/34/2006-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th November, 2019

S.O. 2048.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 32/2007) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 07.11.2019.

[No. L-29012/34/2006-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 25TH OCTOBER 2019

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 32/2007

I Party	**II Party**
Smt. Chikkamma, W/o Kallegowda, Hadi Halli, Nagar Navile Post, Bagur Hobli, Channarayapatna Taluk, Hassan Distt - 573 111. (Karnataka).	The Managing Director, Mysore Minerals Limited, No. 39, M. G Road, BANGALORE - 560 001.

Appearance

Advocate for I Party : Mr. K T Govinde Gowda

Advocate for II Party : Mr. L. Venkatarama Reddy

AWARD

The Central Government vide Order No. L-29012/34/2006-IR(M) dated 01.03.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the management of Mysore Minerals Limited is justified in terminating the services/ premature superannuating of the services of Smt. Chikkamma w.e.f. 29.06.1998? If not, to what relief the workman is entitled to?"**

1. The dispute was raised by the 1st Party workman Smt. Chikkamma W/o Kalle Gowda, who is now expired but her legal heirs are not brought on record. However, the deceased had prosecuted her case by filing claim statement, by cross examining the management witness and by adducing rebuttal evidence. Written argument submitted by the learned counsel who represented the deceased during her life time is on record. The reference does not abate on the death of the 1st Party workman. The reference order of Central Government u/sec 10 of 'the Act' is for recording a finding by this Tribunal, whether or not the action of the Management was justified. Whereas in a civil suit if a sole plaintiff or a defendant expires during the pendency of the proceeding and his/her legal heirs are not brought on record within the stipulated time, the suit as against such deceased person abates. But in the Industrial Dispute if the Tribunal finds that action of the Management was not justified and was illegal, that usually follows with an Award of reinstatement with full or portion of back wages. In the event the workman expires, his/her legal heirs are entitled to receive the said amount from the employer.

The claim of the 1st Party is, she joined the service of the 2nd Party on 03.11.1980 at its Mining Unit Byrapura Chromite Mines, Channarayapatna Taluk, Hassan District as a Mining worker under Token No. 746. Her date of birth is 03.11.1945 as per the Horoscope maintained by her parents; same is accepted by the 2nd Party for the purpose of all the Statutory Records. Though she was entitled to continue in service up to 03.11.2003, on subjecting her to a medical examination, the 2nd Party refused employment on 29.06.1998. The Medical Certificate is illegal, and Medical Examination is not held in accordance with the Mining Rules 1955-29(C) i.e., by a doctor of the rank of Assistant

Surgeon. Her signature is obtained by the 2nd Party Officials on several applications. Several of her co-workers are also terminated on the medical ground of unfitness or over age. One such co-employee namely Smt. K Dundamma preferred a Writ Petition No. 5615/2001 (S-RES) before the Hon'ble High Court of Karnataka, same was allowed on 29.03.2001. The Writ Appeal No. 3460/2001 connected with 3459/2001 preferred against the said order in W.P No. 5615/2001 (S-RES) came to be rejected on 12.06.2002. The Employee / Writ Petitioner prematurely retired was reinstated with back wages and continuity of service. Writ Petitions filed by similarly placed employees in Writ Petition Nos. 26101/2001 C/W W.P No. 23798/2001, 23797/2001 & 23794/2001 against the very same Management were also allowed. The Medical Reports and orders of termination were quashed with a cost payable by the Employer / Mysore Minerals Limited.

2. It is further claimed that, the action of the 2nd Party in terminating the services of the workman prematurely amounts to retrenchment within the meaning of Section 2(oo) of the I.D Act, but without following mandatory provisions of Sec 25(F)(G)(H) and (N) of I.D Act of 1947. The 2nd Party has also violated its own Certified Standing Orders i.e. Mysore Minerals Limited Officers and Employees Conditions of Service, Conduct and Disciplinary Proceedings Rules/Clause, 18 & 24. The workman's Date of birth is not changed by the 2nd Party in the statutory records. The Dismissal order is liable to be set aside with consequential monetary benefits.

3. The counter case of the 2nd Party is,

that the dispute raised is time barred. 1st Party was given 30 days' time to prefer the appeal before the Appellate Medical Board as per rules, but she did not avail the opportunity extended to her. Inspired by the judgments of the Hon'ble High Court in W.P No. 5615/2001 and 26101/2001, she has raised the dispute after a lapse of considerable length of time. The Medical Examination of all the employees and workers working at the Mines Unit was arranged in the year 1997-98 as per the Mines Rules 1955. A team of qualified and Senior Medical Officers from Hutti Gold Mines Limited carried out Medical Examination. She was found aged more than 58 years as per Medical Report. Hence, it was decided to terminate her from service. The 2nd Party Management relieved her from service on the ground of superannuation by settling her terminal benefits. She has received the terminal benefits i.e. EPF, gratuity, leave pension and settled the matter with the 2nd Party without any protest and without any grievance of her rights, hence has no right to raise the dispute. As on the date of reference there was no relationship of employer and employee between the parties. Hence, the reference is bad in law. She is gainfully employed and earning salary.

Both parties have adduced their evidence and submitted their arguments in writing.

4. On behalf of the 2nd Party their Assistant Manager was examined as a witness. Through him attested copy of the 'B Register' pertaining to the 1st Party was marked as Ex M-1. Accordingly her date of Birth is still maintained as 03.11.1945. During his cross examination, the witness identified the Photostat copies of the documents confronted to him as Ex W-1 to Ex W-5 - they are the Photostat copies of the Office order passed by the 2nd Party in terminating her service on the ground that she is physically unfit to work in the Mines, it is stated in the said order that, on medical examination she was issued Form-O declaring that she was unfit to be engaged in work and she was given opportunity to seek re-medical examination. But she failed to submit any application for re-medical examination. Hence, she is discharged from service w.e.f 29.06.1998. Ex W-2 is the judgment of the Hon'ble High Court in the matter of Smt. K. Dundamma vs MML (supra). Ex W-3 is the judgment of the Division Bench of the Hon'ble High Court in rejecting the appeal preferred by the Management challenging the order at Ex W-2. Ex W-4 is the common order passed by the Hon'ble High Court in the Writ Petitions filed by similarly placed employees of the 2nd Party whereby the order of termination which were under challenge were all quashed. Ex W-5 is the office order dated 22.08.2008 extending the superannuation of its employees from 58 years to 60 years.

It was brought out during the cross examination of the witness that no safety measures and welfare provisions as required by the Mines Rules are provided for the Mining workers; in the year 1995-1996 the 2nd Party entrusted the Mining work to a Private Company and suffered loss of 21 crores in Shimoga and Hassan Districts; having suffered loss they decided to reduce the number of workers and Medical Examination of the mining workers was resorted. The 2nd Party has its own Certified Standing Order i.e., Mysore Mineral Limited Officers and Employees' Conditions of Service Conduct and Disciplinary Proceedings Rules. As per clause 18 and 24 of the Certified Standing Order any termination has to be followed by enquiry along with 3 months notice pay. But no such notice pay was paid to the 1st Party workman.

5. As per clause 18.3 of the Certified Standing Orders of the 2nd Party, the change in the date of birth as entered in the Company's Statutory Record can only be effected by a judgment of a Competent Court; now the age of the employees of the company is enhanced to 60 years adopting the policy of the State Government enhancing the age of superannuation from 58 to 60 years. Had if the deceased workman was allowed to serve until superannuation, she would have continued in service upto 03.11.2003. Admittedly it was an en-masse termination of employees on the ground of superannuation or physical unfitness. The Hon'ble High Court has already quashed similar Medical Certificates issued to the employees.

6. Except the self-serving statement of MW-1 no document is placed on record that the Medical Examination is conducted by the qualified Doctors in accordance with the Rule 29-B of the Mines Rules 1955. The disputed Medical Certificate is not made available by both parties. There is no documentary proof that the 1st Party was informed to prefer an appeal before the Appellate Medical Board if she was aggrieved by the Medical Report. The 2nd Party without addressing the question raised by the 1st Party workman against illegal Medical Examination would contend that having accepted the terminal benefits and having severed her relationship, her claim cannot be sustained.

7. It is a point to be noted that the 2nd Party contended that the medical examination was conducted as per the settlement arrived between the Management and the Mysore Minerals Employees Association by qualified Senior Medical Officers. MW-1 was ignorant of the fact whether said Mysore Minerals Employees Association represented clerical staff of the MML only. However, he had admitted that the Mining Workers had formed Byrapura Chromite Mines Union. No document is placed to establish the bonafides of subjecting the employees en-masse for medical examination. As per the admission of MW-1 during 1998 there were 4,000 Mining Workers in all the 40 mining units of the 2nd Party in Karnataka and out of them 2,000 were working in various mines of Hassan. They thought of reducing the number of workers having suffered financial crisis, when the mining was entrusted to a private party. It was at that juncture medical examination of all the mining workers were conducted through the Doctors from Hutti Gold Mines. It is not made known by the 2nd Party that how and for what reason the 1st Party workman was found physically unfit to work in the Mine as on the day of her medical examination. The 1st Party due to her ignorance, illiteracy or for want of information might not have challenged the Medical Report before the Appellate Medical Board, but that cannot legalise the action of premature superannuation / termination effected on the basis of medical report which was basically not in consonance with the procedure contemplated in rules (supra) applicable to them.

8. The action of the 2nd Party is not justified for another reason also that, they being the establishment having workforce exceeding thousands, if were to retrench the workmen due to their financial crunch, they could not have done so, without complying the mandate of sec 25-N of the I.D Act, which they have omitted. If the refusal of employment to the workman is to be termed as retirement, it is a pre-retirement at the pleasure of the employer which is definitely illegal. If it is to be termed as retrenchment then also it is vitiated for not complying the mandatory provisions of section 25-F, G, H and N of the I.D Act. Wherefore the action of the 2nd Party in terminating her service / prematurely superannuating her w.e.f 29.06.1998 is neither justified nor legal.

9. Having held that the termination / premature superannuation illegal, the next question is, the relief that could be moulded in favour of the Legal Heirs of the deceased. The deceased in her affidavit evidence had averred to the effect that she was hale and healthy, without conducting the medical examination on her as per procedure they fabricated the documents; without any allegation and without subjecting her to departmental enquiry she is terminated illegally. She has no other source of income except her employment in the 2nd Party.

10. On one side there is the cause of the deceased 1st Party workman who lost her avocation, in the mid-way of her career by curtailing her service by 5 years, on the other side there is evidentiary material that, she had accepted the terminal benefits and did not challenge her illegal removal for 9 years. There appears to be some merit in the contention of the 2nd Party that, inspired by the judgment of the Hon'ble High Court in W.P No. 5615/2001 and other cases she raised the present dispute. However, a balance is to be struck between the two. The 2nd Party has to be reminded that an aggrieved workman cannot be non-suited from the reliefs available under the Welfare Legislature of the I.D Act 1947 for delaying in raising Industrial Dispute. Moreover the reference order, on its legality was not challenged by the 2nd Party before the Appropriate Forum. In the opinion of this Tribunal, ends of justice would be met by awarding a lump sum compensation of Rs. 40,000/- (Rupees Forty Thousand Only) to the Class-I Legal Heirs of the deceased workman Smt. Chikkamma.

AWARD

The reference is accepted

The action of the 2nd Party Management MML in terminating the services/premature superannuating of the services of late Smt. Chikkamma w.e.f. 29.06.1998 is not justified.

The 2nd Party is directed to pay Rs. 40,000/-(Rupees Forty Thousand Only) to Class-I Legal Heirs of the deceased 1st Party workman Smt. Chikkamma, on their producing necessary documentary proof before the 2nd Party.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 25th October, 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 20 नवम्बर, 2019

का.आ. 2049.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 28/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.11.2019 को प्राप्त हुआ था।

[सं. एल-29012/30/2006-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th November, 2019

S.O. 2049.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 28/2007) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 07.11.2019.

[No. L-29012/30/2006-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 25TH OCTOBER 2019

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 28/2007

I Party

Sh. A. Kempegowda,
S/o Late Sh. Lakke Gowda,
Since Deceased by LR's

1a) Smt. Thimmamma,
W/o Late A. Kempegowda

1b) Sh. Manje Gowda,
S/o. Late A. Kempegowda

1c) Sh. Kumar,
S/o. Late A. Kempegowda

1d) Smt. Shivamma,
D/o. Late A. Kempegowda

1e) Sh. Rangaswamy,
S/o. Late A. Kempegowda

All are residing at
Anathi Village and Post,
Bagur Hobli,
Channarayapatna Taluk,
Hassan Distt - 573 131.
Karnataka.

II Party

The Managing Director,
Mysore Minerals Limited,
No. 39, M. G Road,
BANGALORE – 560 001.

Appearance

Advocate for I Party : Mr. K T Govinde Gowda

Advocate for II Party : Mr. L. Venkatarama Reddy

AWARD

The Central Government vide Order No. L-29012/30/2006-IR(M) dated 01.03.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the management of Mysore Minerals Limited is justified in terminating the services/ premature superannuating of the services of Sri. A Kempegowda w.e.f. 06.06.1998? If not, to what relief the workman is entitled to?"

1. The dispute was raised by the 1st Party workman Sh. A. Kempegowda, who is now expired and represented by his widow and 4 children - his Class-I Legal heirs.

The claim of the 1st Party is, he joined the service of the 2nd Party on 23.01.1986 at its Mining Unit at Thagadur Chromite Mines and thereafter was transferred to Byrapura Chromite Mines, Channarayapatna Taluk, Hassan District as a Mining worker. His date of birth is 23.01.1944 as per the Horoscope maintained by his parents; same is accepted by the 2nd Party for the purpose of all the Statutory Records. Though he was entitled to continue in service up to 23.01.2002, on subjecting him to a medical examination, the 2nd Party refused employment on 06.06.1998. The Medical Certificate is illegal, and Medical Examination is not held in accordance with the Mining Rules 1955-29(C) i.e., by a doctor of the rank of Assistant Surgeon. His signature is obtained by the 2nd Party Officials on several applications. Several of his co-workers are also terminated on the medical ground of unfitness or over age. One such co-employee namely Smt. K Dundamma preferred a Writ Petition No. 5615/2001 (S-RES) before the Hon'ble High Court of Karnataka, same was allowed on 29.03.2001. The Writ Appeal No. 3460/2001 connected with 3459/2001 preferred against the said order in W.P No. 5615/2001(S-RES) came to be rejected on 12.06.2002. The Employee / Writ Petitioner prematurely retired was reinstated with back wages and continuity of service. Writ Petitions filed by similarly placed employees in Writ Petition Nos. 26101/2001 C/W W.P No. 23798/2001, 23797/2001 & 23794/2001 against the very same Management were also allowed. The Medical Reports and orders of termination were quashed with a cost payable by the Employer/ Mysore Minerals Limited.

2. It is further claimed that, the action of the 2nd Party in terminating the services of the workman prematurely amounts to retrenchment within the meaning of Section 2(oo) of the I.D Act, but without following mandatory provisions of Sec 25(F)(G)(H) and (N) of I.D Act of 1947. The 2nd Party has also violated its own Certified Standing Orders i.e Mysore Minerals Limited Officers and Employees Conditions of Service, Conduct and Disciplinary Proceedings Rules/Clause, 18 & 24. The workman's Date of birth is not changed by the 2nd Party in the statutory records. The Dismissal order is liable to be set aside with consequential monetary benefits.

3. The counter case of the 2nd Party is,

that the dispute raised is time barred. 1st Party was given 30 days' time to prefer the appeal before the Appellate Medical Board as per rules, but he did not avail the opportunity extended to him. Inspired by the judgments of the Hon'ble High Court in W.P No. 5615/2001 and 26101/2001, he has raised the dispute after a lapse of considerable length of time. The Medical Examination of all the employees and workers working at the Mines Unit was arranged in the year 1997-98 as per the Mines Rules 1955. A team of qualified and Senior Medical Officers from Hutti Gold Mines Limited carried out Medical Examination. He was found aged more than 58 years as per Medical Report. Hence, it was decided to terminate him from service. The 2nd Party Management relieved him from service on the ground of superannuation by settling his terminal benefits. He has received the terminal benefits i.e. EPF, gratuity, leave pension and settled the matter with the 2nd Party without any protest and without any grievance of his rights, hence has no right to raise the dispute. As on the date of reference there was no relationship of employer and employee between the parties. Hence, the reference is bad in law. He is gainfully employed and earning salary.

Both parties have adduced their evidence and submitted their arguments in writing.

4. On behalf of the 2nd Party their Assistant Manager was examined as a witness. During his cross examination, the witness identified the Photostat copies of the documents confronted to him as Ex W-1 to Ex W-5. Ex W-1 is the Photostat copy of the application submitted by the 1st Party to the Employees Welfare Fund Trust of the 2nd Party indicating his Date of Birth as 23.01.1944. Ex W-2 is the judgment of the Hon'ble High Court in the matter of Smt. K. Dundamma vs MML (supra). Ex W-3 is the judgment of the Division Bench of the Hon'ble High Court in rejecting the appeal preferred by the Management challenging the order at Ex W-2. Ex W-4 is the common order passed by the Hon'ble High Court in the Writ Petitions filed by similarly placed employees of the 2nd Party whereby the order of

termination which were under challenge were all quashed. Ex W-5 is the office order dated 22.08.2008 extending the superannuation of its employees from 58 years to 60 years.

It was brought out during the cross examination of the witness that no safety measures and welfare provisions as required by the Mines Rules are provided for the Mining workers; in the year 1995-1996 the 2nd Party entrusted the Mining work to a Private Company and suffered loss of 21 crores in Shimoga and Hassan Districts; having suffered loss they decided to reduce the number of workers and Medical Examination of the mining workers was resorted. The 2nd Party has its own Certified Standing Order i.e., Mysore Mineral Limited Officers and Employees' Conditions of Service Conduct and Disciplinary Proceedings Rules.

5. As per clause 18.3 of the Certified Standing Orders of the 2nd Party, the change in the date of birth as entered in the Company's Statutory Record can only be effected by a judgment of a Competent Court; now the age of the employees of the company is enhanced to 60 years adopting the policy of the State Government enhancing the age of superannuation from 58 to 60 years. Had if the 1st Party continued in service up to his superannuation, he would have been in service up to 2002. Admittedly it was an en-masse termination of employees on the ground of superannuation or physical unfitness. The Hon'ble High Court has already quashed similar Medical Certificates issued to the employees.

6. Except the self-serving statement of MW-1 no document is placed on record that the Medical Examination is conducted by the qualified Doctors in accordance with the Rule 29-B of the Mines Rules 1955. The disputed Medical Certificate is not made available by both parties. There is no documentary proof that the 1st Party was informed to prefer an appeal before the Appellate Medical Board if he was aggrieved by the Medical Report. The 2nd Party without addressing the question raised by the 1st Party workman against illegal Medical Examination would contend that having accepted the terminal benefits and having severed his relationship, his claim cannot be sustained.

7. MW-1 during cross examination though admitted that there are Statutory Reports like, B-register and Provident Fund Register (pertaining to the employees) no such document was produced and the witness was ignorant as to whether change of age as per the medical certificate was intimated to the EPF Authority; he further admitted that the termination order was not annexed with the medical certificate which is in dispute in this reference. There was no evidence from the 2nd Party regarding the age of the 1st Party as assessed by the Medical Officer or the opinion of the Medical Officer about his medical unfitness. The 1st Party due to ignorance, illiteracy or for want of information might not have challenged the Medical Report before the Appellate Medical Board, but that cannot legalise the action of premature superannuation / termination effected on the basis of medical report which was basically not in consonance with the procedure contemplated in the rules (supra) applicable to them.

8. The action of the 2nd Party is not justified for another reason also that, they being the establishment having workforce exceeding thousands if were to retrench the workmen due to their financial crunch, they could not have done so, without complying the mandate of section 25-N of the I.D Act, which they have omitted. If the refusal of employment to the workman is to be termed as retirement, it is a pre-retirement at the pleasure of the employer which is definitely illegal. If it is to be termed as retrenchment then also it is vitiated for not complying the mandatory provisions of section 25-F, G, H and N of the I.D Act. Wherefore the action of the 2nd Party in terminating his service / premature superannuating w.e.f 06.06.1998 is neither justified nor legal.

9. Having held that the termination / premature superannuation illegal, the next question is, the relief that could be moulded in favour of the Legal Heirs of the deceased. The deceased workman has filed his affidavit evidence stating that except his employment with the 2nd Party he had no other source of income or alternate employment.

10. On one side there is the cause of the 1st Party workman who lost his avocation, in the mid-way of his career by curtailing his service by 4 years, on the other side there is evidentiary material that, he had accepted the terminal benefits and did not challenge his illegal removal for 9 years. There appears to be some merit in the contention of the 2nd Party that, inspired by the judgment of the Hon'ble High Court in W.P No. 5615/2001 and other cases he raised the present dispute. However, a balance is to be struck between the two. The 2nd Party has to be reminded that an aggrieved workman cannot be non-suited from the reliefs available under the Welfare Legislature of the I.D Act 1947 for delaying in raising Industrial Dispute. Moreover the reference order, on its legality was not challenged by the 2nd Party before the Appropriate Forum. In the opinion of this Tribunal, ends of justice would be met by awarding a lump sum compensation of Rs. 30,000/- (Rupees Thirty Thousand Only) to Smt. Thimmamma wife of the deceased 1st Party workman Sh. A. Kempegowda since all the children are majors and there is nothing to infer that they are depending on their mother for their livelihood.

AWARD

The reference is accepted

The action of the 2nd Party Management MML in terminating the services/premature superannuating of the services of late Sh. A. Kempegowda w.e.f. 06.06.1998 is not justified.

The 2nd Party is directed to pay Rs. 30,000/-(Rupees Thirty Thousand Only) to Smt. Thimmamma Wife of the deceased 1st Party workman Sh. A. Kempegowda within 2 months from the date of publication of the Award in the Official Gazette, failing which the amount shall carry future interest at the rate of 6% per annum.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 25th October, 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 20 नवम्बर, 2019

का.आ. 2050.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 24/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.11.2019 को प्राप्त हुआ था।

[सं. एल-29012/25/2006-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th November, 2019

S.O. 2050.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 24/2007) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 07.11.2019.

[No. L-29012/25/2006-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 25TH OCTOBER 2019

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 24/2007

I Party	**II Party**
Smt. Javaramma, W/o Some Gowda, Hullenahalli, Agrahara Belaguli Village and Post, Channarayapatna Taluk, Hassan - 573 131. Karnataka.	The Managing Director, Mysore Minerals Limited, No. 39, M. G Road, BANGALORE – 560 001.

Appearance

Advocate for I Party : Mr. K T Govinde Gowda

Advocate for II Party : Mr. L. Venkatarama Reddy

AWARD

The Central Government vide Order No. L-29012/25/2006-IR(M) dated 23.02.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the management of Mysore Minerals Limited is justified in terminating the services/premature superannuating of the services of Smt. Javaramma w.e.f. 22.05.1998? If not, to what relief the workman is entitled to?"

1. The dispute was raised by the 1st Party workman Smt. Javaramma W/o Some Gowda, who is now expired but her legal heirs are not brought on record. However, the deceased had prosecuted her case by filing claim statement, by cross examining the management witness and by adducing rebuttal evidence. Written argument submitted by the learned counsel who represented the deceased during her life time is on record. The reference does not abate on the death of the 1st Party workman. The reference order of Central Government u/sec 10 of 'the Act' is for recording a finding by this Tribunal, whether or not the action of the Management was justified. Whereas in a civil suit if a sole plaintiff or a defendant expires during the pendency of the proceeding and his/her legal heirs are not brought on record within the stipulated time, the suit as against such deceased person abates. But in the Industrial Dispute if the Tribunal finds that action of the Management was not justified and was illegal, that usually follows with an Award of reinstatement with full or portion of back wages. In the event the workman expires, his/her legal heirs are entitled to receive the said amount from the employer.

The claim of the 1st Party is, she joined the service of the 2nd Party during the 1982 at its Mining Unit Jamboor Mines, Channarayapatna Taluk, Hassan District as a Mining worker. She furnished her date of birth as 16.09.1952; same is accepted by the 2nd Party for the purpose of all the Statutory Records. Though she was entitled to continue in service up to 16.09.2011, on subjecting her to a medical examination, the 2nd Party refused employment on 22.05.1998. The Medical Certificate is illegal, and Medical Examination is not held in accordance with the Mining Rules 1955-29(C) i.e., by a doctor of the rank of Assistant Surgeon. Her signature is obtained by the 2nd Party Officials on several applications. Several of her co-workers are also terminated on the medical ground of unfitness or over age. One such co-employee namely Smt. K Dundamma preferred a Writ Petition No. 5615/2001 (S-RES) before the Hon'ble High Court of Karnataka, same was allowed on 29.03.2001. The Writ Appeal No. 3460/2001 connected with 3459/2001 preferred against the said order in W.P No. 5615/2001 (S-RES) came to be rejected on 12.06.2002. The Employee / Writ Petitioner prematurely retired was reinstated with back wages and continuity of service. Writ Petitions filed by similarly placed employees in Writ Petition Nos. 26101/2001 C/W W.P No. 23798/2001, 23797/2001 & 23794/2001 against the very same Management were also allowed. The Medical Reports and orders of termination were quashed with a cost payable by the Employer / Mysore Minerals Limited.

2. It is further claimed that, the action of the 2nd Party in terminating the services of the workman prematurely amounts to retrenchment within the meaning of Section 2(oo) of the I.D Act, but without following mandatory provisions of Sec 25(F)(G)(H) and (N) of I.D Act of 1947. The 2nd Party has also violated its own Certified Standing Orders i.e. Mysore Minerals Limited Officers and Employees Conditions of Service, Conduct and Disciplinary Proceedings Rules/Clause, 18 & 24. The workman's Date of birth is not changed by the 2nd Party in the statutory records. The Dismissal order is liable to be set aside with consequential monetary benefits.

3. The counter case of the 2nd Party is,

that the dispute raised is time barred. 1st Party was given 30 days' time to prefer the appeal before the Appellate Medical Board as per rules, but she did not avail the opportunity extended to her. Inspired by the judgments of the Hon'ble High Court in W.P No. 5615/2001 and 26101/2001, she has raised the dispute after a lapse of considerable length of time. The Medical Examination of all the employees and workers working at the Mines Unit was arranged in the year 1997-98 as per the Mines Rules 1955. A team of qualified and Senior Medical Officers from Hutti Gold Mines Limited carried out Medical Examination. She was found aged more than 58 years as per Medical Report. Hence, it was decided to terminate her from service. The 2nd Party Management relieved her from service on the ground of superannuation by settling her terminal benefits. She has received the terminal benefits i.e. EPF, gratuity, leave pension and settled the matter with the 2nd Party without any protest and without any grievance of her rights, hence has no right to raise the dispute. As on the date of reference there was no relationship of employer and employee between the parties. Hence, the reference is bad in law. She is gainfully employed and earning salary.

Both parties have adduced their evidence and submitted their arguments in writing.

4. On behalf of the 2nd Party their Assistant Manager was examined as a witness. Through him attested copy of the 'B Register' pertaining to the 1st Party was marked as Ex M-1. Accordingly as on the date of commencement of her employment i.e. 14.09.1982 she was aged 35 years.

During his cross examination, the witness identified the Photostat copies of the documents confronted to him as Ex W-1 to Ex W-6 - they are the Photostat copies of the School Transfer Certificate issued by the Government Primary School wherein the Date of Birth of the Student is shown as 21.05.1946. Ex W-2 Office order passed by the 2nd Party in terminating her service on the ground that she is physically unfit to work in the Mines, it is stated in the said order that, on medical examination she was issued Form-O declaring that she was unfit to be engaged in work and she was given opportunity to seek re-medical examination. But she failed to submit any application for re-medical examination. Hence, she is discharged from service w.e.f 22.05.1998. Ex W-3 is the judgment of the Hon'ble High Court in the matter of Smt. K. Dundamma vs MML (supra). Ex W-4 is the judgment of the Division Bench of the Hon'ble High Court in rejecting the appeal preferred by the Management challenging the order at Ex W-3. Ex W-5 is the common order passed by the Hon'ble High Court in the Writ Petitions filed by similarly placed employees of the 2nd Party whereby the order of termination which were under challenge were all quashed. Ex W-6 is the office order dated 22.08.2008 extending the superannuation of its employees from 58 years to 60 years.

It was brought out during the cross examination of the witness that no safety measures and welfare provisions as required by the Mines Rules are provided for the Mining workers; in the year 1995-1996 the 2nd Party entrusted the Mining work to a Private Company and suffered loss of 21 crores in Shimoga and Hassan Districts; having suffered loss they decided to reduce the number of workers and Medical Examination of the mining workers was resorted. The 2nd Party has its own Certified Standing Order i.e., Mysore Mineral Limited Officers and Employees' Conditions of Service Conduct and Disciplinary Proceedings Rules. As per clause 18 and 24 of the Certified Standing Order any termination has to be followed by enquiry along with 3 months notice pay. But no such notice pay was paid to the 1st Party workman.

5. As per clause 18.3 of the Certified Standing Orders of the 2nd Party, the change in the date of birth as entered in the Company's Statutory Record can only be effected by a judgment of a Competent Court; now the age of the employees of the company is enhanced to 60 years adopting the policy of the State Government enhancing the age of Superannuation from 58 to 60 years. Ex M-1 the 'B-Register' extract does not disclose the Date of Birth instead her age is shown as 35 years as on the date of joining the service on 14.09.1982. However as per the Transfer Certificate / Ex W-1 she is born on 21.05.1946. Accepting the said document, she would have attained superannuation by May 2004. Admittedly it was an en-masse termination of employees on the ground of superannuation or physical unfitness. The Hon'ble High Court has already quashed similar Medical Certificates issued to the employees.

6. Except the self-serving statement of MW-1 no document is placed on record that the Medical Examination is conducted by the qualified Doctors in accordance with the Rule 29-B of the Mines Rules 1955. The disputed Medical Certificate is not made available by both parties. There is no documentary proof that the 1st Party was informed to prefer an appeal before the Appellate Medical Board if she was aggrieved by the Medical Report. The 2nd Party without addressing the question raised by the 1st Party workman against illegal Medical Examination would contend that having accepted the terminal benefits and having severed her relationship, her claim cannot be sustained.

7. It is a point to be noted that the 2nd Party contended that the medical examination was conducted as per the settlement arrived between the Management and the Mysore Minerals Employees Association by qualified Senior Medical Officers. MW-1 was ignorant of the fact whether said Mysore Minerals Employees Association represented clerical staff of the MML only. However, he had admitted that the Mining Workers had formed Byrapura Chromite Mines Union. No document is placed to establish the bonafides of subjecting the employees en-masse for medical examination. As per the admission of MW-1 during 1998 there were 4,000 Mining Workers in all the 40 mining units of the 2nd Party in Karnataka and out of them 2,000 were working in various mines of Hassan. They thought of reducing the number of workers having suffered financial crisis, when the mining was entrusted to a private party. It was at that juncture medical examination of all the mining workers were conducted through the Doctors from Hutti Gold Mines. It is not made known by the 2nd Party that how and for what reason the 1st Party workman was found physically unfit to work in the Mine as on the day of her medical examination. The 1st Party due to her ignorance, illiteracy or for want of information might not have challenged the Medical Report before the Appellate Medical Board, but that cannot legalise the action of premature superannuation / termination effected on the basis of medical report which was basically not in consonance with the procedure contemplated in rules (supra) applicable to them.

8. The action of the 2nd Party is not justified for another reason also that, they being the establishment having workforce exceeding thousands, if were to retrench the workmen due to their financial crunch, they could not have done so, without complying the mandate of sec 25-N of the I.D Act, which they have omitted. If the refusal of employment to the workman is to be termed as retirement, it is a pre-retirement at the pleasure of the employer which is definitely illegal. If it is to be termed as retrenchment then also it is vitiated for not complying the mandatory provisions of section

25-F, G, H and N of the I.D Act. Wherefore the action of the 2nd Party in terminating her service / prematurely superannuating her w.e.f 22.05.1998 is neither justified nor legal.

9. Having held that the termination / premature superannuation illegal, the next question is, the relief that could be moulded in favour of the Legal Heirs of the deceased. The deceased in her affidavit evidence had averred to the effect that she was hale and healthy, without conducting the medical examination on her as per procedure they fabricated the documents; without any allegation and without subjecting her to departmental enquiry she is terminated illegally. She has no other source of income except her employment in the 2nd Party.

10. On one side there is the cause of the deceased 1st Party workman who lost her avocation, in the mid-way of her career by curtailing her service by 6 years, on the other side there is evidentiary material that, she had accepted the terminal benefits and did not challenge her illegal removal for 9 years. There appears to be some merit in the contention of the 2nd Party that, inspired by the judgment of the Hon'ble High Court in W.P No. 5615/2001 and other cases she raised the present dispute. However, a balance is to be struck between the two. The 2nd Party has to be reminded that an aggrieved workman cannot be non-suited from the reliefs available under the Welfare Legislature of the I.D Act 1947 for delaying in raising Industrial Dispute. Moreover the reference order, on its legality was not challenged by the 2nd Party before the Appropriate Forum. In the opinion of this Tribunal, ends of justice would be met by awarding a lump sum compensation of Rs. 60,000/- (Rupees Sixty Thousand Only) to the Class-I Legal Heirs of the deceased workman Smt. Javaramma.

AWARD

The reference is accepted

The action of the 2nd Party Management MML in terminating the services/premature superannuating of the services of late Smt. Javaramma w.e.f. 22.05.1998 is not justified.

The 2nd Party is directed to pay Rs. 60,000/-(Rupees Sixty Thousand Only) to Class-I Legal Heirs of the deceased 1st Party workman Smt. Javaramma, on their producing necessary documentary proof before the 2nd Party.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 25th October, 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 20 नवम्बर, 2019

का.आ. 2051.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 23/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.11.2019 को प्राप्त हुआ था।

[सं. एल-29012/24/2006-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th November, 2019

S.O. 2051.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 23/2007) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 07.11.2019.

[No. L-29012/24/2006-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 29TH OCTOBER 2019

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 23 /2007

I Party	**II Party**
Sh. A. Balakrishna, S/o Late Annamalai Goundar, Since Deceased by LR's	The Managing Director, Mysore Minerals Limited, No. 39, M. G Road,
1a) Smt. Rajamma, W/o Late A. Balakrishna	BANGALORE – 560 001.
1b) Smt. Manjula, D/o. Late. A. Balakrishna	
1c) Sh. B. Sundaresh, S/o. Late A. Balakrishna	
1d) Sh. B Ganesh, S/o. Late A. Balakrishna	
Dommara Halli Village, Near Tumkur Road, Lakshmipura Post, Dasanpura Hobli, Bangalore North Taluk - 562 162.	

Appearance

Advocate for I Party : Mr. K T Govinde Gowda

Advocate for II Party : Mr. L. Venkatarama Reddy

AWARD

The Central Government vide Order No. L-29012/24/2006-IR(M) dated 23.02.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the management of Mysore Minerals Limited is justified in terminating the services/premature superannuating of the services of Sri A. Balakrishna w.e.f. 16.04.1998? If not, to what relief the workman is entitled to?"**

1. The dispute was raised by the 1st Party workman Sh. A Balakrishna, who is now expired and represented by his widow and 3 children-his Class-I Legal Heirs.

The claim of the 1st Party is, he joined the service of the 2nd Party on 27.04.1970 at its Mining Unit at Haranahalli Mines and thereafter was transferred to Jamboor Chromite Mines, Nuggehalli Hobli Channaraypatna Taluk, Hassan District, as a Mining worker. His date of birth is 27.04.1942 as per the Horoscope maintained by his parents; same is accepted by the 2nd Party for the purpose of all the Statutory Records. Though, he was entitled to continue in service up to 27.04.2000, on subjecting him to a medical examination, the 2nd Party refused employment on 16.04.1998, on the plea that he has reached superannuation age of 58 years. The Medical Certificate is illegal, and Medical Examination is not held in accordance with the Mining Rules 1955-29(C) i.e., by a doctor of the rank of Assistant Surgeon. His signature is obtained by the 2nd Party Officials on several applications. Several of his co-workers are also terminated on the medical ground of unfitness or over age. One such co-employee namely Smt. K Dundamma preferred a Writ Petition No. 5615/2001 (S-RES) before the Hon'ble High Court of Karnataka, same was allowed on 29.03.2001.

The Writ Appeal No. 3460/2001 connected with 3459/2001 preferred against the said order in W.P No. 5615/2001(S-RES) came to be rejected on 12.06.2002. The Employee/Writ Petitioner prematurely retired was reinstated with back wages and continuity of service. Writ Petitions filed by similarly placed employees in Writ Petition Nos. 26101/2001 C/W W.P No. 23798/2001, 23797/2001 & 23794/2001against the very same Management were also allowed. The Medical Reports and orders of termination were quashed with a cost payable by the Employer/Mysore Minerals Limited.

2. It is further claimed that, the action of the 2nd Party in terminating the services of the workman prematurely amounts to retrenchment within the meaning of Section 2(oo) of the I.D Act, but without following mandatory provisions of Sec 25(F)(G)(H) and (N) of I.D Act of 1947. The 2nd Party has also violated its own Certified Standing Orders i.e Mysore Minerals Limited Officers and Employees Conditions of Service, Conduct and Disciplinary Proceedings Rules/Clause, 18 & 24.The workman's Date of birth is not changed by the 2nd Party in the statutory records. The Dismissal order is liable to be set aside with consequential monetary benefits.

3. The counter case of the 2nd Party is,

that the dispute raised is time barred. 1st Party was given 30 days' time to prefer the appeal before the Appellate Medical Board as per rules, but he did not avail the opportunity extended to him. Inspired by the judgments of the Hon'ble High Court in W.P No. 5615/2001 and 26101/2001, he has raised the dispute after a lapse of considerable length of time. The Medical Examination of all the employees and workers working at the Mines Unit was arranged in the year 1997-98 as per the Mines Rules 1955. A team of qualified and Senior Medical Officers from Hutti Gold Mines Limited carried out Medical Examination. He was found aged more than 58 years as per Medical Report. Hence, it was decided to terminate him from service. The 2nd Party Management relieved him from service on the ground of superannuation by settling his terminal benefits. He has received the terminal benefits i.e. EPF, gratuity, leave pension and settled the matter with the 2nd Party without any protest and without any grievance of his rights, hence has no right to raise the dispute. As on the date of reference there was no relationship of employer and employee between the parties. Hence, the reference is bad in law.

Both parties have adduced their evidence and submitted their arguments in writing.

4. On behalf of the 2nd Party their Assistant Manager was examined as a witness. Through him the attested copy of the 'B' register and Service Record were marked as Ex M-1 and Ex M-2. As per these documents, his date of birth is 27.04.1942; his service record is not maintained upto the last date of his service i.e., 16.04.1998.

During his cross examination, the witness identified the Photostat copies of the documents confronted to him as Ex W-1 to Ex W-5. Ex W-1 is the Photostat copy of the covering letter by the Manager Haranahalli Mines while forwarding his 'B' register extract to the senior Manager Jamboor Chromite Mines. Ex W-2 is the judgment of the Hon'ble High Court in the matter of Smt. K. Dundamma vs MML (supra). Ex W-3 is the judgment of the Division Bench of the Hon'ble High Court in rejecting the appeal preferred by the Management challenging the order at Ex W-2. Ex W-4 is the common order passed by the Hon'ble High Court in the Writ Petitions filed by similarly placed employees of the 2nd Party whereby the order of termination which were under challenge were all quashed. Ex W-5 is the office order dated 22.08.2008 extending the superannuation of its employees from 58 years to 60 years.

It was brought out during the cross examination of the witness that no safety measures and welfare provisions as required by the Mines Rules are provided for the Mining workers; in the year 1995-1996 the 2nd Party entrusted the Mining work to a Private Company and suffered loss of 21 crores in Shimoga and Hassan Districts; having suffered loss they decided to reduce the number of workers and Medical Examination of the mining workers was resorted. The 2nd Party has its own Certified Standing Order i.e., Mysore Mineral Limited Officers and Employees' Conditions of Service Conduct and Disciplinary Proceedings Rules.

5. As per clause 18.3 of the Certified Standing Orders of the 2nd Party, the change in the date of birth as entered in the Company's Statutory Record can only be effected by the judgment of a Competent Court; now the age of the employees of the company is enhanced to 60 years adopting the policy of the State Government enhancing the age of superannuation from 58 to 60 years. However, said benefit is not applicable to the 1st Party workman since, he would have superannuated in the year 2000 itself. Admittedly, it was an en-masse termination of employees on the ground of superannuation or physical unfitness. The Hon'ble High Court has already quashed similar Medical Certificates issued to the employees.

6. Except the self-serving statement of MW-1 no document is placed on record that the Medical Examination is conducted by the qualified Doctors in accordance with the Rule 29-B of the Mines Rules 1955. The disputed Medical Certificate is not made available by both parties. There is no documentary proof that the 1st Party was informed to prefer an appeal before the Appellate Medical Board if he was aggrieved by the Medical Report. The 2nd Party without addressing the question raised by the 1st Party workman against illegal Medical Examination would contend that having accepted the terminal benefits and having severed his relationship, his claim cannot be sustained.

7. MW1 was ignorant as to whether change of age as per the medical certificate was intimated to the EPF Authority; he further admitted that the termination order was not annexed with the medical certificate which is in dispute in this reference. There was no evidence from the 2nd Party regarding the age of the 1st Party as assessed by the Medical Officer. The deceased workman has lost around 2 years of service, probably for the reason that the 2nd Party suffered financial loss and was in urgency to disembrace their workforce to mitigate their hardship. Thus, they resorted to Medical Examination of the workman. The 1st Party due to ignorance, illiteracy or for want of information might not have challenged the Medical Report before the Appellate Medical Board, but that cannot legalise the action of premature superannuation / termination effected by the 2nd Party.

8. The action of the 2nd Party is not justified for another reason also that, they being the establishment having workforce exceeding thousands if were to retrench the workmen due to their financial crunch, they could not have done so, without complying the mandate of section 25-N of the I.D Act, which they have omitted. If the refusal of employment to the workman is to be termed as retirement, it is a pre-retirement at the pleasure of the employer which is definitely illegal. If it is to be termed as retrenchment then also it is vitiated for not complying the mandatory provisions of section 25-F,G,H and N of the I.D Act. Wherefore the action of the 2nd Party in terminating his service / premature superannuating w.e.f 16.04.1998 is neither justified nor legal.

9. Having held that the termination / premature superannuation illegal, the next question is, the relief that could be moulded in favour of the Legal Heirs of the deceased.

10. On one side there is the cause of the 1st Party workman who lost his avocation, in the mid-way of his career by curtailing his service by 2 years, on the other side there is evidentiary material that, he had accepted the terminal benefits and did not challenge his illegal removal for 9 years. There appears to be some merit in the contention of the 2nd Party that, inspired by the judgment of the Hon'ble High Court in W.P No. 5615/2001 and other cases he raised the present dispute. However, a balance is to be struck between the two. The 2nd Party has to be reminded that an aggrieved workman cannot be non-suited from the reliefs available under the Welfare Legislature of the I.D Act 1947 for delaying in raising Industrial Dispute. Moreover the reference order, on its legality was not challenged by the 2nd Party before the Appropriate Forum. In the opinion of this Tribunal, ends of justice would be met by awarding a lump sum compensation of Rs. 25,000/- (Rupees Twenty Five Thousand Only) to Smt. Rajamma wife of the deceased 1st Party workman Sh. A. Balakrishna since all the children are majors and there is nothing to infer that they are depending on their mother for their livelihood.

AWARD

The reference is accepted

The action of the 2nd Party Management MML in terminating the services/premature superannuating of the services of late Sh. A. Balakrishna w.e.f. 16.04.1998 is not justified.

The 2nd Party is directed to pay Rs. 25,000/-(Rupees Twenty Five Thousand Only) to Smt. Rajamma Wife of the deceased 1st Party workman Sh. A. Balakrishna within 2 months from the date of publication of the Award in the Official Gazette, failing which the amount shall carry future interest at the rate of 6% per annum.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 29th October, 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 20 नवम्बर, 2019

का.आ. 2052.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 09/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.11.2019 को प्राप्त हुआ था।

[सं. एल-29012/96/2008-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 20th November, 2019

S.O. 2052.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 09/2009) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 07.11.2019.

[No. L-29012/96/2008-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRUIBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 29TH OCTOBER 2019

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 09/2009

I Party	**II Party**
Sh. A. Sathyanarayana, S/o Late Venkappa, C/o Maheshwari Stores, Murudeswara Layout, Khachagal Road, Abbigadde Post, Koppa Taluk - 577 126.	The Managing Director, Mysore Minerals Limited, No. 39, M. G Road, BANGALORE – 560 001.

Appearance

Advocate for I Party : Mr. K T Govinde Gowda

Advocate for II Party : Mr. A.K. Vasanth

AWARD

The Central Government vide Order No. L-29012/96/2008-IR(M) dated 27.02.2009 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the termination of Shri A. Sathyanarayana by the management of M/s. Mysore Minerals Limited w.e.f 18.07.1998 is justified? What relief the workman is entitled to?"

1. The dispute was raised by the 1st Party workman Sh. A. Sathyanarayana, who is now expired but his legal heirs are not brought on record. However, the deceased had prosecuted his case by filing claim statement, by cross examining the management witness and by adducing rebuttal evidence. Written argument submitted by the learned counsel who represented the deceased during his life time is on record. The reference does not abate on the death of the 1st Party workman. The reference order of Central Government u/sec 10 of 'the Act' is for recording a finding by this Tribunal, whether or not the action of the Management was justified. Whereas in a civil suit if a sole plaintiff or a defendant expires during the pendency of the proceeding and his/her legal heirs are not brought on record within the stipulated time, the suit as against such deceased person abates. But in the Industrial Dispute if the Tribunal finds that action of the Management was not justified and was illegal, that usually follows with an Award of reinstatement with full or portion of back wages. In the event the workman expires, his/her legal heirs are entitled to receive the said amount from the employer.

The claim of the 1st Party is, he joined the service of the 2nd Party on 10.06.1975 at its Mining Unit at Thirthahalli Clay Mines as a Mining worker and later promoted as Driver. His date of birth is 26.04.1942 as per the Horoscope maintained by his parents; same is accepted by the 2nd Party for the purpose of all the Statutory Records. Though, he was entitled to continue in service up to 26.04.2000, on subjecting him to medical examination, the 2nd Party refused employment on 18.07.1998, on the plea that he has reached superannuation age of 58 years. The Medical

Certificate is illegal, and Medical Examination is not held in accordance with the Mining Rules 1955-29(C) i.e., by a doctor of the rank of Assistant Surgeon. His signature is obtained by the 2nd Party Officials on several applications. Several of his co-workers are also terminated on the medical ground of unfitness or over age. One such co-employee namely Smt. K Dundamma preferred a Writ Petition No. 5615/2001 (S-RES) before the Hon'ble High Court of Karnataka, same was allowed on 29.03.2001. The Writ Appeal No. 3460/2001 connected with 3459/2001 preferred against the said order in W.P No. 5615/2001(S-RES) came to be rejected on 12.06.2002. The Employee/Writ Petitioner prematurely retired was reinstated with back wages and continuity of service. Writ Petitions filed by similarly placed employees in Writ Petition Nos. 26101/2001 C/W W.P No. 23798/2001, 23797/2001 & 23794/2001 against the very same Management were also allowed. The Medical Reports and orders of termination were quashed with a cost payable by the Employer / Mysore Minerals Limited.

2. It is further claimed that, the action of the 2nd Party in terminating the services of the workman prematurely amounts to retrenchment within the meaning of Section 2(oo) of the I.D Act, but without following mandatory provisions of Sec 25(F)(G)(H) and (N) of I.D Act of 1947. The 2nd Party has also violated its own Certified Standing Orders i.e. Mysore Minerals Limited Officers and Employees Conditions of Service, Conduct and Disciplinary Proceedings Rules/Clause, 18 & 24. The workman's Date of birth is not changed by the 2nd Party in the statutory records. The Dismissal order is liable to be set aside with consequential monetary benefits.

3. The counter case of the 2nd Party is,

that the dispute raised is time barred. 1st Party was given 30 days' time to prefer the appeal before the Appellate Medical Board as per rules, but he did not avail the opportunity extended to him. Inspired by the judgments of the Hon'ble High Court in W.P No. 5615/2001 and 26101/2001, he has raised the dispute after a lapse of considerable length of time. The Medical Examination of all the employees and workers working at the Mines Unit was arranged in the year 1997-98 as per the Mines Rules 1955. A team of qualified and Senior Medical Officers from Hutti Gold Mines Limited carried out Medical Examination. He was found aged more than 58 years as per Medical Report. Hence, it was decided to terminate him from service. The 2nd Party Management relieved him from service on the ground of superannuation by settling his terminal benefits. He has received the terminal benefits i.e. EPF, gratuity, leave pension and settled the matter with the 2nd Party without any protest and without any grievance of his rights, hence has no right to raise the dispute. As on the date of reference there was no relationship of employer and employee between the parties. Hence, the reference is bad in law.

Both parties have adduced their evidence and submitted their arguments in writing.

4. On behalf of the 2nd Party their Assistant Manager was examined as a witness. Through him the attested copy of the 'B' register and service record were marked as Ex M-1. Accordingly his date of birth is 26.04.1942.

During his cross examination, the witness identified the Photostat copies of the documents confronted to him as Ex W-1 to Ex W-5. Ex W-1 is the Photostat copy of the application submitted by the 1st Party to the Employees Welfare Fund Trust of the 2nd Party indicating his Date of Birth as 26.04.1942. Ex W-2 Office order passed by the 2nd Party in terminating his service on the ground that he is physically unfit to work in the Mines, it is stated in the said order that, on medical examination he was issued Form-O declaring that he was unfit to be engaged in work and he was given opportunity to seek re-medical examination. But he failed to submit any application for re-medical examination. Hence, he is discharged from service w.e.f 18.07.1998. Ex W-3 is the judgment of the Hon'ble High Court in the matter of Smt. K. Dundamma vs MML (supra). Ex W-4 is the judgment of the Division Bench of the Hon'ble High Court in rejecting the appeal preferred by the Management challenging the order at Ex W-3. Ex W-5 is the common order passed by the Hon'ble High Court in the Writ Petitions filed by similarly placed employees of the 2nd Party whereby the order of termination which were under challenge were all quashed. Ex W-6 is the office order dated 22.08.2008 extending the superannuation of its employees from 58 years to 60 years.

It was brought out during the cross examination of the witness that no safety measures and welfare provisions as required by the Mines Rules are provided for the Mining workers; in the year 1995-1996 the 2nd Party entrusted the Mining work to a Private Company and suffered loss of 21 crores in Shimoga and Hassan Districts; having suffered loss they decided to reduce the number of workers and Medical Examination of the mining workers was resorted. The 2nd Party has its own Certified Standing Order i.e., Mysore Mineral Limited Officers and Employees' Conditions of Service Conduct and Disciplinary Proceedings Rules.

5. As per clause 18.3 of the Certified Standing Orders of the 2nd Party, the change in the date of birth as entered in the Company's Statutory Record can only be effected by a judgment of a Competent Court; now the age of the employees of the company is enhanced to 60 years adopting the policy of the State Government enhancing the age of superannuation from 58 to 60 years. However, said benefit is not applicable to the 1st Party workman since, he would have superannuated in the year 2000 itself. Admittedly, it was an en-masse termination of employees on the ground of superannuation or physical unfitness. The Hon'ble High Court has already quashed similar Medical Certificates issued to the employees.

6. Except the self-serving statement of MW-1 no document is placed on record to demonstrate that the Medical Examination is conducted by the qualified Doctors in accordance with the Rule 29-B of the Mines Rules 1955. The disputed Medical Certificate is not made available by both parties. There is no documentary proof that the 1st Party was informed to prefer an appeal before the Appellate Medical Board if he was aggrieved by the Medical Report. The 2nd Party without addressing the question raised by the 1st Party workman against illegal Medical Examination would contend that having accepted the terminal benefits and having severed his relationship, his claim cannot be sustained.

7. MW1 was ignorant as to whether change of age as per the medical certificate was intimated to the EPF Authority; he further admitted that the termination order was not annexed with the medical certificate which is in dispute in this reference. There was no evidence from the 2nd Party regarding the age of the 1st Party as assessed by the Medical Officer. The deceased workman has lost around 2 years of service, probably for the reason that the 2nd Party suffered financial loss and was in urgency to disembrace their workforce to mitigate their hardship. Thus, they resorted to Medical Examination of the workman. The 1st Party due to ignorance, illiteracy or for want of information might not have challenged the Medical Report before the Appellate Medical Board, but that cannot legalise the action of premature superannuation / termination effected by the 2nd Party.

8. The action of the 2nd Party is not justified for another reason also that, they being the establishment having workforce exceeding thousands if were to retrench the workmen due to their financial crunch, they could not have done so, without complying the mandate of section 25-N of the I.D Act, which they have omitted. If the refusal of employment to the workman is to be termed as retirement, it is a pre-retirement at the pleasure of the employer which is definitely illegal. If it is to be termed as retrenchment then also it is vitiated for not complying the mandatory provisions of section 25-F,G,H and N of the I.D Act. Wherefore the action of the 2nd Party in terminating his service / premature superannuating w.e.f 18.07.1998 is neither justified nor legal.

9. Having held that the termination / premature superannuation illegal, the next question is, the relief that could be moulded in favour of the Legal Heirs of the deceased.

10. On one side there is the cause of the 1st Party workman who lost his avocation, in the mid-way of his career by curtailing his service by 2 years, on the other side there is evidentiary material that, he had accepted the terminal benefits and did not challenge his illegal removal for 11 years. There appears to be some merit in the contention of the 2nd Party that, inspired by the judgment of the Hon'ble High Court in W.P No. 5615/2001 and other cases he raised the present dispute. However, a balance is to be struck between the two. The 2nd Party has to be reminded that an aggrieved workman cannot be non-suited from the reliefs available under the Welfare Legislature of the I.D Act 1947 for delaying in raising Industrial Dispute. Moreover the reference order, on its legality was not challenged by the 2nd Party before the Appropriate Forum. In the opinion of this Tribunal, ends of justice would be met by awarding a lump sum compensation of Rs. 25,000/- (Rupees Twenty Five Thousand Only) to the Class-I Legal Heirs of the deceased workman Sh. A. Sathyanarayana.

AWARD

The reference is accepted

The action of the 2nd Party Management MML in terminating the services/premature superannuating of the services of late Sh. A. Sathyanarayana w.e.f. 18.07.1998 is not justified.

The 2nd Party is directed to pay Rs. 25,000/-(Rupees Twenty Five Thousand Only) to Class-I Legal Heirs of the deceased 1st Party workman Sh. A. Sathyanarayana, on their producing necessary documentary proof before the 2nd Party.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 29th October, 2019)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 21 नवम्बर, 2019

का.आ. 2053.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स स्टील अथॉरिटी ऑफ इण्डिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 37/2019) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.11.2019 को प्राप्त हुआ था।

[सं. एल-26011/01/2019-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st November, 2019

S.O. 2053.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 37/2019) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Steel Authority of India Limited and their workman, which was received by the Central Government on 07.11.2019.

[No. L-26011/01/2019-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan,Presiding Officer

Dated the 25th day of October, 2019

INDUSTRIAL DISPUTE No. 37/2019

Between:

The General Secretary,
Association of SAIL Employees' Union,
Central marketing Organization,
C/o SAIL Branch Sales Office,
9th Floor, Taramandal Complex,
Saifabad, Hyderabad – 500 004. …Petitioner

AND

The Branch Manager,
M/s. Steel Authority of India Ltd.,
9th Floor, Taramandal Complex,
Saifabad, Hyderabad – 500 004. …Respondent

Appearances:

For the Petitioner : Party in Person

For the Respondent : Representative

AWARD

This is a reference issued by the Government of India, Ministry of Labour and Employment, New Delhi vide order No. L- 26011/01/2019–IR(M) dated 13.3.2019 whereunder this Tribunal is required to adjudicate the dispute i.e.,

> "Whether the demand of the Association of SAIL Employees' Union, Hyderabad vide letter dated 5.5.2018 to include the journey time from Hyderabad to Nagulapally in the working hours for the employees of Warehouse, Nagulapally is fair, legal and justified? If not, then what relief (s) the disputant is entitled to and from which date? What other directions (if any) are necessary in this regard?''

After receiving the above said reference, it was registered as ID No. 37/2019 in this Tribunal and notices were issued to both the parties and procured their presence.

2. The case is posted for filing of claim statement. At such stage, the General Secretary of the Petitioners' Union as well as the representative of the Respondent jointly filed a petition to withdraw the present case in view of the Memorandum of Settlement made between the parties, wherein the contents of the Memorandum of Settlement are as follows:

> "Whereas, during pendency of the dispute both the parties have discussed and deliberated the matter and have agreed to settle the matter out of the court with the agreed term that journey time to Warehouse and back will not be included in the working hours for the employees posted at Warehouse, Hyderabad. The working hours will begin from the recording of the attendance at the workplace i.e., warehouse.

Whereas, in view of the above settlement, the dispute and differences as per the reference is settled accordingly and no party is permitted to raise the same issue in any disputed form in future.

Whereas, both parties are agreed to move a joint application enclosing copy of the settlement to the Hon'ble CGIT cum Labour Court, Hyderabad by passing appropriate orders in terms of the settlement since dispute under reference is finally resolved mutually. The settlement shall be implemented within 60 days from the disposal of ID case No.37 of 2019."

3. Through the joint petition both the parties stated that they have settled the dispute outside the court with the agreed terms and conditions along with their proof of identity with a prayer to dispose of the case as per the settlement made by them.

4. In view of the Memorandum of Settlement made between the parties, it is seen that both the parties have settled their dispute and the Petitioner Union has no claim to raise, hence, the joint petition is allowed and the Memorandum of Settlement made between the parties is accepted. The case is closed as settled.

The reference is answered accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, and corrected by me on this the 25th day of October, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 21 नवम्बर, 2019

का.आ. 2054.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स गुरुबानी सेक्यूरिटी सर्विसेज के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 21/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.11.2019 को प्राप्त हुआ था।

[सं. एल-30011/13/2012-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st November, 2019

S.O. 2054.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 21/2012) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Gurubani Security Services and their workman, which was received by the Central Government on 07.11.2019.

[No. L-30011/13/2012-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 23rd day of October, 2019

INDUSTRIAL DISPUTE No. 21/2012

Between:

The General Secretary,
National Crane Operators & Workers Union,
D.No.15-236, Near Venkateswara Swamy Temple,
M.H. Road, Roypet,
Narsapur -534275. West Godavari District. …Petitioner Union

AND

M/s. Gurubani Security Services,
Plot No.90, Surya Enclave,
Road No.3, Near LIC City Branch,
Tirumala Ghiri,
Secunderabad – 15. … Respondent

Appearances:

For the Petitioner : Sri T.V. Govinda Rao, Advocate

For the Respondent : Representative

AWARD

The Government of India, Ministry of Labour by its order No. L-30011/13/2012-IR(M) dated 4.6.2012 referred the following dispute between the management of M/s. ONGC and their union under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

SCHEDULE

"Whether the demands (as per the list enclosed) raised by the National Crane Operators and Workers Union against the management of M/s. Gurbani Security Pvt. Ltd., a security contractor of ONGC, Rajahmundry is legal and justified? What relief the union raising the dispute is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 21/2012 and notices were issued to the parties concerned.

2. The case is posted for filing of evidence affidavit and enquiry of the Petitioner union but, inspite of availing several opportunities, the Petitioner union remained absent and there is no representation on behalf of the Petitioner union which clearly indicates that perhaps the dispute of the Petitioner union has already been settled. In the circumstances stated above, it is felt that the Petitioner union is not interested in pursuing the dispute. Thus, 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P Phani Gowri, Personal Assistant and corrected by me on this the 23rd day of October, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 21 नवम्बर, 2019

का.आ. 2055.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स आंध्र सीमेन्टस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 25/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.11.2019 को प्राप्त हुआ था।

[सं. एल-29012/8/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st November, 2019

S.O. 2055.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 25/2015) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Andhra Cements Limited and their workman, which was received by the Central Government on 07.11.2019.

[No. L-29012/8/2015-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM -LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 23rd day of October, 2019

INDUSTRIAL DISPUTE No. 25/2015

Between:

Sri Sabbavarapu Appala Naidu
S/o Sanni,
Vill-Peda Naidupalem,
Mandal-Sabbavaram,
Distt. Visakhapatnam (A.P.) …Petitioner

AND

The Senior Vice President & Plant Head,
Andhra Cements Limited, Visakha Cement Works,
Jaypee Group,Porlupalem (Village),
Post – Durganagar, Visakhapatnam (A.P.) – 530 029. …Respondent

Appearances:

For the Petitioner : M/s. P.V. Giridhar & P.V.P.A. Hara Kumar & P. Annapurna, Advocates

For the Respondent : M/s. Saibaba & Srinivas, Advocates

AWARD

The Government of India, Ministry of Labour by its order No.L-29012/8/2015-IR(M) dated 10.4.2015 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Andhra Cements Limited and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Andhra Cements Limited, Visakha Cement Works, Jaypee group of company in not considering Sh. Sabbavarapui Appala Naidu, S/o Sanni workman in service in contravention of 25 F of the Industrial Disputes Act, or else in not paying legal/termination benefits for the past services

rendered to Andhra Cements Limited, Visakhapatnam is legal and justified? If not, to what relief the concerned workman entitled for?"

The reference is numbered in this Tribunal as I.D. No. 25/2015 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement by the Petitioner .

3. Inspite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner Workman to attend the court to prosecute his case. But the Petitioner workman failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman has already been settled and the Petitioner has no claim to raise against the Respondents. Hence, the case of the Petitioner workman is closed and a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 23rd day of October, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 21 नवम्बर, 2019

का.आ. 2056—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स आंध्र सीमेन्टस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 26/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.11.2019 को प्राप्त हुआ था।

[सं. एल-29012/5/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st November, 2019

S.O. 2056.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 26/2015) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Andhra Cements Limited and their workman, which was received by the Central Government on 07.11.2019.

[No. L-29012/5/2015-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 23rd day of October, 2019

INDUSTRIAL DISPUTE No. 26/2015

Between:

Sri Karaka Naidu
S/o Thata,
Mogalipuram (Village),
Sabbavaram (Mandal),
Distt. Visakhapatnam (A.P.) …Petitioner

AND

The Senior Vice President (admn)& Plant Head,
Andhra Cements Limited, Visakha Cement Works,
Jaypee Group, Porlupalem (Village),
Post – Durganagar, Visakhapatnam (A.P.) – 530 029. …Respondent

Appearances:

For the Petitioner : M/s. P.V. Giridhar & P.V.P.A. Hara Kumar & P. Annapurna, Advocates

For the Respondent : M/s. Saibaba & Srinivas, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L- 29012/5/2015-IR(M) dated 1.4.2015 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Andhra Cements Limited and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Andhra Cements Limited, Visakha Cement Works, Jaypee Group of company in not considering Sh. Karaka Yerri Naidu, S/o Thata workman in dispute in service or else in not paying legal/termination benefits to his father for the past services rendered to Andhra Cements Limited is legal and justified? If not, to what relief the concerned workman is entitled for?"

The reference is numbered in this Tribunal as I.D. No. 26/2015 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement by the Petitioner .

3. Inspite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner Workman to attend the court to prosecute his case. But the Petitioner workman failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman has already been settled and the Petitioner has no claim to raise against the Respondents. Hence, the case of the Petitioner workman is closed and a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 23rd day of October, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 21 नवम्बर, 2019

का.आ. 2057.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स आंध्र सीमेन्टस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 27/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.11.2019 को प्राप्त हुआ था।

[सं. एल-29012/4/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st November, 2019

S.O. 2057.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 27/2015) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Andhra Cements Limited and their workman, which was received by the Central Government on 07.11.2019.

[No. L-29012/4/2015-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 23rd day of October, 2019

INDUSTRIAL DISPUTE No. 27/2015

Between:

Sri Sabbavarapu Ramesh
S/o Nagavaih
Pedanaidupalem (Village)
Sabbavaram (Mandal),
Distt. Visakhapatnam (A.P.) … Petitioner

AND

The Senior Vice President (admn)& Plant Head,
Andhra Cements Limited, Visakha Cement Works,
Jaypee Group, Porlupalem (Village),
Post – Durganagar, Visakhapatnam (A.P.) – 530 029. …Respondent

Appearances:

For the Petitioner : M/s. P.V. Giridhar & P.V.P.A. Hara Kumar & P. Annapurna, Advocates

For the Respondent : M/s. Saibaba & Srinivas, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-29012/4/2015-IR(M) dated 1.4.2015 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Andhra Cements Limited and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Andhra Cements Limited, Visakha Cement Works, Jaypee Group of company in not considering Sh. Sabbavarapu Ramesh S/o Nagavaih workman in dispute in service or else in not paying legal benefits to his father for the past services rendered to Andhra Cements Limited is legal and justified? If not, to what relief the concerned workman is entitled for?"

The reference is numbered in this Tribunal as I.D. No. 27/2015 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement by the Petitioner .

3. Inspite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner Workman to attend the court to prosecute his case. But the Petitioner workman failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman has already been settled and the Petitioner has no claim to raise against the Respondents. Hence, the case of the Petitioner workman is closed and a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 23rd day of October, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 21 नवम्बर, 2019

का.आ. 2058.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स आंध्र सीमेन्टस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 28/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.11.2019 को प्राप्त हुआ था।

[सं. एल-29012/3/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st November, 2019

S.O. 2058.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 28/2015) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Andhra Cements Limited and their workman, which was received by the Central Government on 07.11.2019.

[No. L-29012/3/2015-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 23rd day of October, 2019

INDUSTRIAL DISPUTE No. 28/2015

Between:

Sri Konathala Satya Rao,
S/o Simhachalam,
Chintala Agraharam (Village)
Pendurthi (Mandal),
Distt. Visakhapatnam (A.P.) …Petitioner

AND

The Senior Vice President (admn) & Plant Head,
Andhra Cements Limited, Visakha Cement Works,
Jaypee Group, Porlupalem (Village),
Post – Durganagar, Visakhapatnam (A.P.) – 530 029. …Respondent

Appearances:

For the Petitioner : M/s. P.V. Giridhar & P.V.P.A. Hara Kumar & P. Annapurna, Advocates

For the Respondent : M/s. Saibaba & Srinivas, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L- 29012/3/2015-IR(M) dated 10.4.2015 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Andhra Cements Limited and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Andhra Cements Limited, Visakha Cement Works, Jaypee Group of company in not considering Sh. Konathala Satya Rao, S/o Simhachalam workman in service in contravention of 25 F of the Industrial Disputes Act, or else in not paying legal benefits for the past services rendered to Andhra Cements Limited is legal and justified? If not, to what relief the concerned workman is entitled for?"

The reference is numbered in this Tribunal as I.D. No. 28/2015 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement by the Petitioner .

3. Inspite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner Workman to attend the court to prosecute his case. But the Petitioner workman failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman has already been settled and the Petitioner has no claim to raise against the Respondents. Hence, the case of the Petitioner workman is closed and a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 23rd day of October, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 21 नवम्बर, 2019

का.आ. 2059.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स आंध्र सीमेन्टस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 29/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.11.2019 को प्राप्त हुआ था।

[सं. एल-29012/2/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st November, 2019

S.O. 2059.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 29/2015) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Andhra Cements Limited and their workman, which was received by the Central Government on 07.11.2019.

[No. L-29012/2/2015-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 22nd day of October, 2019

INDUSTRIAL DISPUTE No. 29/2015

Between:

Sri Gaddam Demudu,
S/o Ramlulu,
Sabbavaram (Village Mandal),
Distt. Visakhapatnam (A.P.) … Petitioner

AND

The Senior Vice President (admn)& Plant Head,
Andhra Cements Limited, Visakha Cement Works,
Jaypee Group, Porlupalem (Village),
Post – Durganagar, Visakhapatnam (A.P.) – 530 029.

…Respondent

Appearances:

For the Petitioner : M/s. P.V. Giridhar & P.V.P.A. Hara Kumar & P. Annapurna, Advocates

For the Respondent : M/s. Saibaba & Srinivas, Advocates

AWARD

The Government of India, Ministry of Labour by its order No.L-29012/2/2015-IR(M) dated 1.4.2015 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Andhra Cements Limited and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Andhra Cements Limited, Visakha Cement Works, Jaypee Group of company in not considering Sh. Gaddam Demudu, S/o Ramlulu, workman in service in contravention of 25 F of the Industrial Disputes Act, or else in not paying legal benefits for the past services rendered to Andhra Cements Limited is legal and justified? If not, to what relief the concerned workman is entitled for?"

The reference is numbered in this Tribunal as I.D. No. 29/2015 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement by the Petitioner .

3. Inspite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner Workman to attend the court to prosecute his case. But the Petitioner workman failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman has already been settled and the Petitioner has no claim to raise against the Respondents. Hence, the case of the Petitioner workman is closed and a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 22nd day of October, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 21 नवम्बर, 2019

का.आ. 2060.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स आंध्र सीमेन्टस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 30/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.11.2019 को प्राप्त हुआ था।

[सं. एल-29012/6/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st November, 2019

S.O. 2060.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 30/2015) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Andhra Cements Limited and their workman, which was received by the Central Government on 07.11.2019.

[No. L-29012/6/2015-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 24th day of October, 2019

INDUSTRIAL DISPUTE No. 30/2015

Between:

Sri Sirapurapu Sanni Babu,
S/o Somulu,
Pedanaidupalem (Village)
Sabbavaram (Mandal),
Distt. Visakhapatnam (A.P.) … Petitioner

AND

The Senior Vice President (admn)& Plant Head,
Andhra Cements Limited, Visakha Cement Works,
Jaypee Group, Porlupalem (Village),
Post – Durganagar, Visakhapatnam (A.P.) – 530 029. …Respondent

Appearances:

For the Petitioner : M/s. P.V. Giridhar & P.V.P.A. Hara Kumar & P. Annapurna, Advocates

For the Respondent : M/s. Saibaba & Srinivas, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-29012/6/2015-IR(M) dated 1.4.2015 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Andhra Cements Limited and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Andhra Cements Limited, Visakha Cement Works, Jaypee Group of company in not considering Sh. Sirapurapu Sanni Babu, S/o Somulu, workman in service in contravention of 25 F of the Industrial Disputes Act, or else in not paying legal benefits for the past services rendered to Andhra Cements Limited is legal and justified? If not, to what relief the concerned workman is entitled for?"

The reference is numbered in this Tribunal as I.D. No. 30/2015 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement by the Petitioner .

3. Inspite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner Workman to attend the court to prosecute his case. But the Petitioner workman failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman has already been settled and the Petitioner has no claim to raise against the Respondents. Hence, the case of the Petitioner workman is closed and a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 24th day of October, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 21 नवम्बर, 2019

का.आ. 2061.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स आंध्र सीमेन्टस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 34/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.11.2019 को प्राप्त हुआ था।

[सं. एल-29012/12/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st November, 2019

S.O. 2061.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 34/2015) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Andhra Cements Limited and their workman, which was received by the Central Government on 07.11.2019.

[No. L-29012/12/2015-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 24th day of October, 2019

INDUSTRIAL DISPUTE No. 34/2015

Between:

Sri Sirapurapu Appala Naidu,
S/o Somulu,
Pedanaidupalem (Village)
Sabbavaram (Mandal),
Distt. Visakhapatnam (A.P.) … Petitioner

AND

The Senior Vice President (admn)& Plant Head,
Andhra Cements Limited, Visakha Cement Works,
Jaypee Group, Porlupalem (Village),
Post – Durganagar, Visakhapatnam (A.P.) – 530 029. …Respondent

Appearances:

For the Petitioner : M/s. P.V. Giridhar & P.V.P.A. Hara Kumar & P. Annapurna, Advocates

For the Respondent : M/s. Saibaba & Srinivas, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-29012/12/2015-IR(M) dated 8.5.2015 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Andhra Cements Limited and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Andhra Cements Limited, Visakha Cement Works, Jaypee Group of company in not considering Sh. Sirapurapu Appala Naidu, S/o Somulu, workman in service in contravention of Section 25F of the Industrial Disputes Act, or else in not paying legal benefits for the past services rendered to Andhra Cements Limited is legal and justified? If not, to what relief the concerned workman is entitled for?"

The reference is numbered in this Tribunal as I.D. No. 34/2015 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement by the Petitioner .

3. Inspite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner Workman to attend the court to prosecute his case. But the Petitioner workman failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman has already been settled and the Petitioner has no claim to raise against the Respondents. Hence, the case of the Petitioner workman is closed and a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 24th day of October, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 21 नवम्बर, 2019

का.आ. 2062.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स आंध्र सीमेन्टस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 35/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.11.2019 को प्राप्त हुआ था।

[सं. एल-29012/11/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st November, 2019

S.O. 2062.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 35/2015) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Andhra Cements Limited and their workman, which was received by the Central Government on 07.11.2019.

[No. L-29012/11/2015-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 24th day of October, 2019

INDUSTRIAL DISPUTE No. 35/2015

Between:

Sri Gorli Appala Naidu,
S/o Demudu,
Gorlivanipalem (Village)
Sabbavaram (Mandal),
Distt. Visakhapatnam (A.P.) …Petitioner

AND

The Senior Vice President (admn)& Plant Head,
Andhra Cements Limited, Visakha Cement Works,
Jaypee Group, Porlupalem (Village),
Post – Durganagar, Visakhapatnam (A.P.) – 530 029. …Respondent

Appearances:

For the Petitioner : M/s. P.V. Giridhar & P.V.P.A. Hara Kumar & P. Annapurna, Advocates

For the Respondent : M/s. Saibaba & Srinivas, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-29012/11/2015-IR(M) dated 8.5.2015 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Andhra Cements Limited and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Andhra Cements Limited, Visakha Cement Works, Jaypee Group of company in not considering Sh. Gorli Appala Naidu, S/o Demudu, workman in service in contravention of Section 25F of the Industrial Disputes Act, or else in not paying legal benefits for the past services rendered to Andhra Cement Company is legal and justified? If not, to what relief the concerned workman is entitled?"

The reference is numbered in this Tribunal as I.D. No. 35/2015 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement by the Petitioner .

3. Inspite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner Workman to attend the court to prosecute his case. But the Petitioner workman failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman has already been settled and the Petitioner has no claim to raise against the Respondents. Hence, the case of the Petitioner workman is closed and a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 24th day of October, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 21 नवम्बर, 2019

का.आ. 2063.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स आंध्र सीमेन्टस लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 36/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.11.2019 को प्राप्त हुआ था।

[सं. एल-29012/13/2015-आईआर (एम)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 21st November, 2019

S.O. 2063.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 36/2015) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Andhra Cements Limited and their workman, which was received by the Central Government on 07.11.2019.

[No. L-29012/13/2015-IR(M)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present: Sri Muralidhar Pradhan, Presiding Officer

Dated the 24th day of October, 2019

INDUSTRIAL DISPUTE No. 36/2015

Between:

Sri Pothala Thata Babu,
S/o Patrudu,
Peddanaidupalem (Village)
Sabbavaram (Mandal),
Distt. Visakhapatnam (A.P.) …Petitioner

AND

The Senior Vice President (admn)& Plant Head,
Andhra Cements Limited, Visakha Cement Works,
Jaypee Group, Porlupalem (Village),
Post – Durganagar, Visakhapatnam (A.P.) – 530 029.

…Respondent

Appearances:

For the Petitioner : M/s. P.V. Giridhar & P.V.P.A. Hara Kumar & P. Annapurna, Advocates

For the Respondent : M/s. Saibaba & Srinivas, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-29012/13/2015-IR(M) dated 8.5.2015 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Andhra Cements Limited and their workman. The reference is,

SCHEDULE

"Whether the action of the management of Andhra Cements Limited, Visakha Cement Works, Jaypee Group of company in not considering Sh. Pothala Thata Babu, S/o Patrudu, workman in service in contravention of Section 25F of the Industrial Disputes Act, or else in not paying legal benefits for the past services rendered to Andhra Cement Company is legal and justified? If not, to what relief the concerned workman is entitled?"

The reference is numbered in this Tribunal as I.D. No. 36/2015 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement by the Petitioner .

3. Inspite of repeated calls, the Petitioner did not turn up. Several opportunities have been given to the Petitioner Workman to attend the court to prosecute his case. But the Petitioner workman failed to attend this Tribunal which clearly indicates that perhaps the dispute of the Petitioner workman has already been settled and the Petitioner has no claim to raise against the Respondents. Hence, the case of the Petitioner workman is closed and a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 24th day of October, 2019.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 25 नवम्बर, 2019

का.आ. 2064.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 169/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.11.2019 प्राप्त हुआ था।

[सं. एल—41012/89/2001—आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 25th November, 2019

S.O. 2064.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 169/2001) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Railway and their workmen, received by the Central Government on 25.11.2019.

[No. L-41012/89/2001-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/169-2001

Present: P. K. Srivastava H.J.S. (Retd)

Shri Channu
S/o Sh.Dallu
Village Kanjoi,P.O.Gotegaon
District Narsinghpur (M.P.) …Workman/Union

Versus

The Divisional Railway Manager,
Central Railway
Jabalpur (M.P)-482001. …Management

AWARD

(Passed on this 24th day of October, 2019.)

1. As per letter dated 15-11-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-41012/89/2001-IR(B-1). The dispute under reference relates to:

"क्या मंडल रेल प्रबंधक, मध्य रेलवे जबलपुर (म. प्र.) के प्रबंधन द्वारा श्री चुन्नू आत्मज डल्लू भूत पूर्व वाय. के. सी. को आरोप पत्र दिनांकित 16.01.1985/ 24.01.1985 के आधार पर 31.05.1985 से सेवा से पृथक करने की कार्यवाही न्यायोचित है ? यदि नहीं तो सम्बंधित कर्मचारी किस अनुतोष का हक़दार है?"

2. After registering the case on the basis of reference, notices were sent to the parties.

3. The case of the workman as stated in his statement of claim is that he was appointed as YKC under Loco Foreman at new Katni Junction on 10-3-1986 and had been working since then to the satisfaction of his Employers. He was served with charge-sheet on 21-5-1985 for unauthorized absence since 9-4-1984. He was not given opportunity to defend and inquiry was held ex-parte against him. The Inquiry Officer did not conduct the inquiry legally and held him guilty of the unauthorized absence , thus holding the charge of misconduct proved which was accepted by the disciplinary authority and he was removed from service. According to him, the punishment was disproportionate. Charges were also not proved during the inquiry, accordingly the workman has prayed for his reinstatement with all benefits setting aside his termination.

4. The case of Management is that the workman willfully absented himself from duty from 9-4-1984 . Hence the charge sheet was issued against him. He did not attend the inquiry inspite of notice hence, according to Rule-9(23) of Railway Servant Disciplinary and Appeal Rules1968 ex-parte inquiry was conducted. He was found guilty of charges consequently removed on 31-5-1985. He came back after 15 years of removal hence his claim is bad due to delay and latches on his part. The inquiry held was perfectly legal and punishment was not disproportionate.

5. On the basis of the pleadings, following preliminary issue was framed by my learned predecessor.

1. "The workman did not appear, hence closing his evidence, evidence of Management was taken by my learned predecessor. The Management filed affidavits of two witnesses and proved inquiry."

2. ''Vide his order dated 7-3-2017,my learned predecessor held the inquiry not justified in law and Management was called upon to prove misconduct."

6. The Management has relied on the statement of other two witnesses but no one appeared for workman for cross-examination. From the statement of Manangement witnesses and documents, charges of unauthorized absence are proved. Now the question arises as to whether the punishment is dis-propritionate or not and whether the workman is entitled to any relief .

6. The proved charges is unauthorized absence of more than one year as it is misconduct in service rules, warranting removal from service, hence punishment of removal from service by Management is held not disproportionate to charge. Further more the workman has raised the dispute after 15 years of his removal. There is nothing on record to show that he kept the dispute alive during this period. Hence he is guilty of delay and latches on his part. For this reason also he is not entitled to any relief.

7. **On the basis of above discussion, following award is passed:-**

A. The action of removal of the workman from services on 31-5-1985 is legal and justified.

B. The Workman is held entitled to no relief.

8. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 25 नवम्बर, 2019

का.आ. 2065.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक आफॅ पटियाला के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2 दिल्ली के पंचाट (संदर्भ संख्या 52/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.11.2019 प्राप्त हुआ था।

[सं. एल–12011/14/2009–आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 25th November, 2019

S.O. 2065.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 52/2009*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court No.-II, Delhi as shown in the Annexure, in the industrial dispute between the management of State Bank of Patiala and their workmen, received by the Central Government on 25.11.2019.

[No. L-12011/14/2009-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, NEW DELHI

Present: Smt. Pranita Mohanty, Presiding Officer, C.G.I.T.-Cum-Labour Court-II, New Delhi

INDUSTRIAL DISPUTE CASE NO. 52/2009

Date of Passing Award- 19th September, 2019

Between:

Shri Rakesh Kumar Chadda,
5, Nashvilla Road,
Near Chayadeep Cinema,
Dehradun. …Workman

Versus

1. Regional Manager,
   State Bank of Patiala,
   Haridwar Road,
   Dehradun-

2. Branch Manager,
   State Bank of Patiala,
   21, Vidhan Sabha Marg,
   Lucknow. …Managements

Appearances:-

None for the workman (A/R) : For the Workman

None for the managements (A/R : For the Managements

AWARD

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of State Bank of Patiala, and its workman/claimant herein, under clause (d) of sub section (1)and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-12011/14/2009 (IR(B-I) dated 27.08.2009 to this tribunal for adjudication to the following effect.

> "Whether the action of the management of State Bank of Patiala in discontinuing/terminating services of Shri Rakesh Kumar Chadda, Deposit collector w.e.f 26.08.2005 without any notice and compensation in

violation of section 25-F,G, and H of the ID Act is justified? If not, what relief the concerned workman is entitled to?''

The claimant filed a claim statement pleading therein that he was working was a Deposit Collector for the management being appointed in the month of February 1990. During the course of employment he was discharging his duties to the utmost satisfaction of the management. On 26.08.2005 the management without assigning any reason illegally terminated the service of the claimant/workman and while doing so no notice for retrenchment, notice pay, or retrenchment compensation was paid to him in compliance to the provision of section 25 of the ID Act. All representations made by him to the management remained un-attendant since the date of termination he is unemployed. The workman then espoused his cause to the union and a demand notice was served. The matter was agitated before the Labour Commissioner where conciliation proceeding was taken up. Since the conciliation failed the Appropriate Government referred the matter to this tribunal for adjudication.

Being noticed the claimant filed the claim statement and the management filed a WS refutting the claim of the workman and stating that the claim is not maintainable since there exists no employer employee relationship between the management and the workman. He might have worked through the contractor who in turn had terminated his service.

On this rival pleading following issues were framed for adjudication.

ISSUES

1. Whether the proceeding is maintainable.

2. Whether the service of the workman was terminated illegally w.e.f. 26.08.2005.

3. To what relief the workman is entitled to.

As per the claim statement the claimant was working for the management w.e.f. 02/1980 as Deposit Collector and during his engagement he was discharging his duty to the utmost satisfaction of the employer. On 26.08.2005 the management terminated his service without following the procedure laid down under law and at the time of termination no notice of termination, notice pay, or retrenchment compensation was paid to him. Though several occasions the claimant/workman had orally requested the management for his reinstatement into service, no action was taken on the same. Finding no other way he approach the Labour Commissioner were conciliation proceeding was taken up but no fruitful result could be achieve. The appropriate government since referred the matter for adjudication notice was issued to the respondent management.

In the WS the respondent has taken a plea that the workman was never appointed by the bank as a Deposit Collector. The claimant was given the agency for collection of deposit for a particular scheme called Janta Deposit Scheme and his relationship with the Bank was only of an agent. He was neither being paid salary nor wage but given commission on the total amount collected by him from the public under the scheme. There was an agreement between the bank and the claimant which expect bringing an end to the relationship of the claimant with the bank as its agent.

When the matter was taken up for the hearing the claimant did not appear to adduce any evidence. Accordingly the management did not adduce the evidence. Since the claim of the claimant has not been supported by any evidence this tribunal has no other option than to pass a no claim award. Hence, ordered.

ORDER

The reference be and the same is answered against the claimant who has not entitled to any relief as preferred. This award is accordingly passed. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

PRANITA MOHANTY, Presiding Officer

19th September, 2019

नई दिल्ली, 25 नवम्बर, 2019

का.आ. 2066.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (संदर्भ संख्या 10/2012—13) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.11.2019 प्राप्त हुआ था।

[सं. एल—12012/27/2012—आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 25th November, 2019

S.O. **2066**.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2012-13*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court Nagpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 25.11.2019.

[No. L-12012/27/2012-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE SHRI S.S.GARG, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/10/2012-13 Date:-23.10.2019

Party No.1(a): The Asstt. General Manager,
State Bank of India, Administrative Office,
S.V. Patel Marg,
Nagpur.

Party No.1(b): The Dy. General Manager,
State Bank of India, Administrative Office,
S.V. Patel Marg,
Nagpur.

V/s.

Party No.2: Shri R.N.Ingle,
R/o Laxmi Vihar Colony, Kulkarni Vihar,
Mangrulpir, Tq. Mangrulpir,
Distt. Washim (M.S)

AWARD

(Dated:-23rd October, 2019)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the Management of State Bank of India and their Workman, Shri R.N.Ingle, for adjudication, as per letter **No.L-12012/27/2012 IR (B-I) Dated 18.07.2012,** with the following schedule:-

> **"Whether the action of the Management of State Bank of India in imposing the punishment of be discharged from the Bank's Service with superannuation benefits upon Shri R.N.Ingle, Sr. Assistant vide their order dated 18.11.2009, is legal and justified? Whether the workman is entitled for his reinstatement in service with full back wages and continuity in service? To what relief the workman is entitled to?"**

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the workman Shri R.N. Ingle, ("the workman" in short) filed the statement of claim and the management of State Bank of India ("party no.1" in short) filed the written statement.

3. The case of the workman as presented in the statement of claim was that, he was appointed on 03.03.1990 as a post of Cashier on compassionate ground. Thereafter, he was promoted as Sr. Asstt. at Shendurjana. In auditor query, he was transferred to Telhara in the year 2009. In the year of 2009, workman had been issued a discharge letter from Party No. 1 with punishment of discharge from bank service with superannuation benefits.

4. According to the workman, management issued a charge sheet on 03.012.2008 for fraudulent transaction and gross violation of procedure while working as Single Window Operator. Enquiry was conducted, in which, four charges were proved and three were not proved. He also asserted that, Disciplinary Authority was concurred with view of the Enquiry Officer and a show cause notice was issued on 29.09.2009. After the reply, Disciplinary Authority punished him as discharged from service. Against this order, he filed an appeal before the Dy. General Manager, but the appeal was dismissed on 27.01.2010.

5. On behalf of the workman, it was also asserted that, since childhood, he wanted to achieve a good post in the State Bank of India. He also asserted that, Enquiry Officer as well as Appellate Authority not considering his defence because, no complaint regarding withdrawal was filed against him by the account holder. He also asserted that Enquiry Officer as well as Appellate Authority has not considered all the facts which were raised by him but they passed a harsh punishment of dismissal.

6. According to the workman, punishment awarded by the Disciplinary as well as Appellate Authority is illegal, contrary to the provision of law, against the principle of natural justice and disproportionate because, these charges do not show mens-ria of workman. He also prayed that, the same is liable to be quashed and set aside. He also prayed that, just and proper to reinstate the workman on his usual post with full back wages and continuity of service.

7. In the written statement, management denied all these facts by asserting that, workman had committed serious irregularity, his explanation was also not proper, so, the controller decided to initiate disciplinary action against the workman. Enquiry Officer gave full opportunity to the workman to defend his case. During the enquiry, the workman was represented by his defence representative. According to the management, enquiry was conducted fairly, properly and by following the principles of natural justice.

8. Disciplinary Authority issued a show cause notice to the workman along with enquiry report and punishment was properly passed. They also asserted that, workman filed an appeal, which was also decided on merit after giving full opportunity to the workman and final order was passed on 18.11.2009.

9. In para 1.6 of written statement it was asserted that, earlier also the workman had committed misconduct by borrowing money from the customers and remained unauthorisedly absent for 143 days, which misconduct was duly proved and the punishment was accepted by the workman. At that time the Bank take lenient view and imposed a mild punishment of 'Censure' under para 521(7) of Shastri Award, in order to give one more chance of improvement. However, the workman instead of improving himself has again committed serious misconducts which resulted in his discharge from bank's service.

10. According to the management, workman was committing a serious misconduct which, resulted in his discharge from his bank service. According to the management, the workman is not entitled to any relief. So, he prayed to dismiss the statement of claim and to answer the reference in favour of management and negative to the workman.

11. Workman filed rejoinder in same footing as statement of claim. Workman denied all material fact which was asserted in written statement. He takes plea that, contents of facts mentioned in written statement are not proved by the Party No.1., hence he did not admit these fact. Reply to the Para No. 1.6, the workman asserted that, contents of this para are groundless and not strictly proved by the Party No.1 as no opportunity was given to the workman. In this regard to show his goodness, hence according to him contents of paragraph are false, in this way by filing rejoinder workman denied in to-to being false.

12. This Tribunal on 02.02.2018 decided validity of departmental enquiry by passing following order, "The departmental enquiry held against the workman is legal and proper and in accordance with principle of natural justice."

Point of determination:-

1. "Whether management of S.B.I. in imposing the punishment to the workman is legal and justified?"
2. "Whether workman entitled for reinstate in service?"
3. "Whether workman entitled any other relief?"

Reason for decision:-

13. On behalf of workman it was argued that, Party No.1 did not provide him full opportunity to defend his case, punishment of discharged from the service with superannuation benefit without qualification from future employment is hars and he is not responsible for any consequence. He also argued that whole charges were proved and three were not proved, but charges were incorrect and unjustified. He also argued that, defence of the Party No.1 is not taken into consideration the document submitted by the account holder of the Bank and all account holder has categorically stated their withdrawals and the received the concerned amount. He also argued that, no monetary loss was caused to the Bank, no misappropriation of the amount was committed by the Party No.2 and also argued that, imposing such type of heavy punishment is contrary to provision of law and principle of natural justice. He also argued that, dismissal from the service

he was shocked and suffered from Heart Attack, because he only bread runner of his family and he is heavy indebted of Bank loan so he prayed that he will be reinstated as his usual post with full back wages and continuity of service. All above argument was denied by the Party No.1. Now, I want to see the argument of Party No.1.

14. On behalf of management written argument was filed by asserting that, the workman had earlier also committed misconduct by borrowing money from the customers and remaining unauthorisedly absent for a 143, which misconduct was duly proved and the punishment was accepted by the workman. The Bank had taken lenient view and had earlier imposed a very mild punishment of 'Censure' under para 521(7)(a) of Sastry Award, in order to give one more chance of improvement. However, the workman instead of improving himself has again committed serious misconducts which resulted in his discharge form Bank's service.

15. On behalf of management it was also argued that, the workman was g iven every opportunity to defend his case, in fact the workman has himself admitted during the course of enquiry that due to oversight the signature on the vouchers remained to be taken and also argued that, the important point to be considered that this was not the first time when the charges are leveled against the workman. On behalf of Party No.1 during the pendency f the domestic enquiry for the first charge sheet another charge sheet bearing No.AGM(admin)/DISC/2009-10/467 dt.11th Nov.2009 was also issued to him, for certain other lapses committed by him while working at Shendurjana Branch as Single Window Operator. On the basis of the workman they prayed that, Tribunal t fist decide the validity of the enquiry and perversity of the findings of the enquiry officer before arriving at any decision regarding the punishment.

16. On behalf of workman he examined himself as P.W.1 on the basis of evidence on which was cross-examined in this Tribunal. Now, I want to discuss some facts come out in this cross-examination. discuss of the evidence with reference to argument of the workman…..as workman stated that, opportunity of cross-examination in departmental enquiry was not given but in his court evidence, workman admitted in para 15 that, "Management produced the documents and examined the witnesses in presence of myself and my defence representative ……cross examined the witnesses…..had signed on the proceedings of the departmental enquiry. The contents of the departmental enquiry were recorded correctly by the Enquiry Officer".

17. Workman also admitted that, "I was given scope to give evidence in my defence…..I had filed ten documents before the Enquiry Officer…. I also examined myself as a witness in my defence. He also admitted in para 16 of his evidence that, written brief in support of my case before the Enquiry Officer….received the final order of the punishment……Appeal preferred against the order of punishment…..rejected by the Appellate Authority".

18. Workman relied on case law, "Union of India and others vs. S.K.Kapoor, (2011)4 SCC 589 and management relied on case laws: -

(a) State Bank of India and Jaipur vs. Nemi Chand Nalwaya, (2011)4 SCC 585.

(b) Regional Manager, U.P.S.R.T.C., Etawah vs. Hoti Lal, AIR 2003 SC1463.

(c) State Bank of India vs. Ramesh Dinkar Punde, (2006)7 SCC 218.

(d) Bharat Forge Company Ltd.,vs. A.B. Zodge, AIR 1996 SC 1557.

19. Now, I want to see the legal positions:-

(a) "8 when a court is considering whether the punishment of "termination from service" imposed upon a Bank employee is shockingly excessive or disproportionate to the gravity of the proved misconduct, the loss of confidence in the employee will be an important and relevant factor. When an unknown person comes to the Bank and claims to be the account holder of a long inoperative account, and a Bank employee, who does not know such person, instructs his colleague to transfer the account from "dormant" to "operative" category (contrary to the instructions regulating dormant accounts) without any kind of verification, and accepts the money withdrawal form from such person, gets a token and collects the amount on behalf of such person for the purpose of handing it over to such person, he in effect enables such unknown person to withdraw the amount contrary to the banking procedures; and ultimately, if it transpires that the peson who claimed to be the account-holder was an impostor, the Bank cannot be found fault with if it says that it has lost confidence in the employee concerned. A Bank is justified in contending that not only the employees who are dishonest, but those who are guilty of gross negligence, are not fit to continue in its service."

(b) "10. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transaction or acts in a fiduciary capacity, highest degree of integrity and trust-worthiness is must and unexceptionable."

(c) "It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its won discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the inquiry officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.

(d) Delhi Cloth Mill's case (supra) that before the proceeding are closed, an opportunity to adduce evidence would be given if a suitable request for such opportunity is made by the employer to the Tribunal, has been reiterated in Sankar Chakrabarty's case after observing that on the question as to the stage as t when leave toadduce further evidence is to be sought for, the decision of this Court in Cooper Engineering Ltd. has not overruled the decision of this Court in Delhi Cloth Mill's case. There is no dispute in the present case that before the closure of the proceedings before the Tribunal, prayer was made by the employer to lead evidence in support of the impugned order of dismissal. Hence denial of the opportunity to the employer to lead evidence before the Tribunal in support of the order of dismissal cannot be justified."

20. Judging the present case with touchstones of principles laid down in the above case laws, my humble opinion is that, workman was not sincere in service. He was negligent about his duties. It also appears that, no complaint regarding corruption, but irregularities were continuing in his carrier. He was punished by the Party No.1 for other charges even after that he did not improve his work. It is common feature that, earning member has family liabilities; it may be quite possible that, he has the liability of education of his children and loan, but this is not considered by this Tribunal for setting-aside the punishment imposed by the competent authority, because Tribunal is not a appellate Court. Moreover, he also availed the appellate rights before competent authority. It also appears that, disciplinary authority imposed him punishment of discharge from the Bank service with retrial benefit i.e. Pension, Provident Fund and Gratuity. In my opinion punishment imposed by the disciplinary authority and confirmed by the appellate authority is proper and justified. Hence it is ordered.

ORDER

The action of the Management of State Bank of India in imposing the punishment of be discharged from the Bank's Service with superannuation benefits upon Shri R.N.Ingle, Sr. Assistant vide their order dated 18.11.2009, is legal and justified. Workman is not entitled for reinstatement in service. He is not entitled to any other relief.

S. S. GARG, Presiding Officer

नई दिल्ली, 25 नवम्बर, 2019

का.आ. 2067.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आईसी आईसी बैंक लिं. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जयपुर के पंचाट (संदर्भ संख्या 20/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.11.2019 प्राप्त हुआ था।

[सं. एल–12012/216/2005–आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 25th November, 2019

S.O. 2067.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/2006*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour Court Jaipur* as shown in the Annexure, in the industrial dispute between the management of ICIC Bank Ltd. and their workmen, received by the Central Government on 25.11.2019.

[No. L-12012/216/2005-IR(B-1)]

B. S. BISHT, Under Secy.

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय,

जयपुर सी.जी.आई.टी. प्रकरण सं. 20 / 2006

राधामोहन चतुर्वेदी, पीठासीन अधिकारी

रेफरेन्स नं. L-12012/216/2005–IR(B-I) दिनांक 09/01/2006

मोहम्मद महमूद आलम पुत्र श्री मोहम्मद फरीद
शनिश्चर मन्दिर के पिछे,
कच्ची बस्ती, जवाहर नगर, जयपुर।

बनाम

1. मुख्य कार्यकारी अधिकारी,
आई.सी.आई.सी. बैंक लिमिटेड
आई.सी.आई.सी. बैंक टॉवर
बान्द्रा – कुर्ला कॉम्पलेक्स,
मुम्बई – 400051

2. शाखा प्रबन्धक,
आई.सी.आई.सी. बैंक लिमिटेड
एस.एम.एस. अस्पताल के सामने
जयपुर

प्रार्थी की ओर से : श्री आर.सी. जैन–प्रतिनिधि
अप्रार्थी की ओर से : श्री आलोक फतेहपुरिया–प्रतिनिधि

: **अधिनिर्णय** :

दिनांक : 12–09–2019

1. श्रम मंत्रालय भारत सरकार, नई दिल्ली द्वारा दिनांक 9.1.2006 को निम्नांकित विवाद औद्योगिक विवाद अधिनियम 1947 (जिसे आगे मात्र अधिनियम कहा जावेगा) की धारा 10 (1) (ड़ी) एवं (2)(ए) के अन्तर्गत प्रदत्त शक्तियों के प्रयोग में इस अधिकरण को न्यायनिर्णयन हेतु प्रेषित किया गया "Whether the action of the management of the Bank of Rajasthan Ltd., Jaipur in terminating the services of Shri Mohd. Mahmood Alam, Sub Staff on 4.3.2005 immediately after reinstated him on 4.3.2005 in compliance with the Award of CGIT, Jaipur is legal and justified? If not, what relief the claimant is entitled to and from which date?"

2. उपयुर्क्त विवाद प्राप्त होने पर अधिकरण द्वारा उभयपक्ष को आहूत किया गया और प्रार्थी को निर्देश दिया गया कि वह अपने दावे का अभिकथन प्रस्तुत करें।

3. प्रार्थी ने दिनांक 21.6.2003 को अपने दावे का अभिकथन प्रस्तुत किया। प्रार्थी के अनुसार उसकी नियुक्ति विपक्षी के अधीन चपरासी कम फर्राश के पद पर दैनिक वेतन पर फरवरी 1998 में हुई थी। प्रार्थी ने दिनांक 15.09.2000 तक कार्य किया। तत्पश्चात दिनांक 16.09.2000 को प्रार्थी को अवैध रूप से सेवामुक्त कर दिया गया जिसके विरूद्ध प्रार्थी ने औद्योगिक विवाद प्रस्तुत किया। इस विवाद को केन्द्रीय सरकार औद्योगिक न्यायाधिकरण एवं श्रम न्यायालय जयपुर ने अधिनिर्णित करते हुए दिनांक 4.11.2004 को अवार्ड पारित किया। अवार्ड में 16.09.2000 को प्रार्थी की सेवामुक्ति को अवैध घोषित करते हुए प्रार्थी को सेवा की निरन्तरता एवं पचास प्रतिशत विगत वेतन सहित सेवा में लेने का आदेश किया। इस अवार्ड के अनुपालन में दिनांक 04.03.2005 को प्रार्थी को सेवा में लिया गया, किन्तु उसी दिन आदेश पारित करते हुए विपक्षी ने प्रार्थी को अकारण सेवामुक्त कर दिया। दिनांक 04.03.2005 को सेवामुक्ति के समय प्रार्थी को कोई नोटिस नहीं दिया। ना ही नोटिस वेतन एवं मुआवजे का भुगतान किया। मात्र यह कहा गया कि उसे 24,120 रूपये व 4,580 रूपये के दो बैंकर्स चेक दिये जा रहें हैं लेकिन वास्तव में 24,120 रूपये का बैंकर्स चेक ही प्रार्थी को दिया और कुछ रसीदों और कागजों पर प्रार्थी के हस्ताक्षर करवा लिये। नोटिस वेतन एवं मुआवजे का कोई बैंकर्स चेक प्रार्थी को नहीं दिया गया। जो राशि नोटिस वेतन एवं मुआवजे की बताई गई है वह राशि भी नियमानुसार देय राशि से कम है। राज्य सरकार द्वारा न्यूनतम वेतन में वृद्धि कर दिये जाने के उपरान्त भी 900 रूपये मासिक की

दर से भुगतान का उल्लेख किया गया। प्रार्थी की सेवामुक्ति के समय विपक्षी के अधीन अनेक कनिष्ठ श्रमिक कार्यरत थे तथा प्रार्थी को सेवामुक्त करने के बाद नये श्रमिकों की भर्ती की गयी। विपक्षी ने श्रमिकों की वरिष्ठता सूची भी जारी नहीं की। प्रार्थी ने विपक्षी को नोटिस देकर ड्यूटी पर लेने का आग्रह किया लेकिन ड्यूटी पर नहीं लिया। अतः विपक्षी द्वारा दिनांक 04.03.2005 से की गई सेवामुक्ति को अवैध घोषित कर सेवा में निरन्तरता एवं समस्त आर्थिक लाभों सहित प्रार्थी को पुनः सेवा में लिये जाने का अधिकारी घोषित किया जावें।

4. विपक्षीगण ने दिनांक 10.6.2005 को अपने प्रतिउत्तर में दावे के अभिकथनों को अस्वीकार किया और यह कहा कि प्रार्थी को अंशकालीन सफाई कर्मचारी के, कार्य के लिये 900 रूपये मासिक वेतन पर रखा गया था। प्रार्थी के दैनिक कार्य की अवधि प्रति सप्ताह 6 घण्टे से कम थी। प्रार्थी को इस अधिकरण द्वारा पारित अवार्ड के अनुपालन में ड्यूटी पर ले लिया गया था किन्तु प्रार्थी के लिये कोई कार्य उपलब्ध नहीं था। इस कारण उसे धारा 25 (एफ) अधिनियम के प्रावधानों की पालना करते हुए दिनांक 04.03.2005 को सेवा से मुक्त कर दिया गया। प्रार्थी को नोटिस वेतन एवं छंटनी मुआवजे की राशि का बैंकर्स चेक उसी दिन दिया गया जिसे प्रार्थी ने प्राप्त कर अपने हस्ताक्षर किये। सेवामुक्ति के समय 4,580 रूपये का चेक पत्रांक 329262 के साथ दिया गया था। प्रार्थी द्वारा दिये गये नोटिस में भी 4,580 रूपये और 24,120 रूपये के बैंकर्स चेक प्राप्त हो जाना स्वीकार किया गया है। अंशकालीन सफाई कर्मचारियों को वेतन उनके कार्य घण्टों के अनुरूप दिया जाता है। प्रार्थी की साप्ताहिक कार्य अवधि छः घण्टे से कम थी। राज्य सरकार द्वारा न्यूनतम वेतन में वृद्धि किये जाने का प्रभाव प्रार्थी की सेवा पर नहीं था। प्रार्थी के लिये कार्य उपलब्ध न होने के कारण उसकी छंटनी की गई। इसके पीछे कोई दुर्भावना या अनुचित श्रम–अभ्यास नहीं था, इसलिये सेवामुक्ति को वैध मानते हुए दावा निरस्त किया जावें।

5. दिनांक 27.6.2011 को प्रार्थी का प्रार्थनापत्र स्वीकार करते हुए विपक्षी राजस्थान बैंक का विलय आईसीआईसीआई बैंक में हो जाने पर आईसीआईसीआई बैंक को इस विवाद में संयोजित करते हुए संशोधित शीर्षक प्रस्तुत करने का आदेश प्रार्थी को दिया गया।

6. प्रार्थी ने अपनी साक्ष्य में स्वंय प्रार्थी मोहम्मद महमूद आलम को परीक्षित किया तथा कोई प्रलेख प्रदर्शित नहीं किया।

7. विपक्षी द्वारा अपने साक्ष्य में सुनील गहलोत उप महाप्रबन्धक को परीक्षित किया। प्रलेखीय साक्ष्य में प्रदर्श–एम 1 से एम–5 प्रलेख प्रदर्शित किये।

8. दिनांक 19 व 28.8.2019 को मैनें उभयपक्ष के प्रतिनिधियों के तर्क वितर्क सुने और साक्ष्य का परिशीलन किया।

9. प्रार्थी का यह तर्क है कि इस अधिकरण के अवार्ड के अनुपालन में दिनांक 4.3.2005 को विपक्षी ने यद्वपि प्रार्थी को पुनः सेवा में लिया, लेकिन उसी दिन दुर्भावनापूर्वक 10 मिनट पश्चात ही अवैध रूप से सेवामुक्त कर दिया। प्रार्थी को 50 प्रतिशत विगत वेतन का बैंकर्स चेक तो दिया किन्तु नोटिस वेतन एवं छंटनी मुआवजे का बैंकर्स चेक नहीं दिया। प्रार्थी को उसी दिन सेवामुक्त कर देना विपक्षी की दुर्भावना का प्रमाण है। प्रार्थी को फरवरी 1998 से मार्च 2005 तक 7 वर्ष की सेवा के आधार पर छंटनी मुआवजा दिया जाना था। जो 6 वर्ष की गणना करते हुए दिया गया है। विपक्षी ने समय समय पर न्यूनतम वेतन में हुई वृद्धि के आधार पर मुआवजा और नोटिस वेतन का भुगतान नहीं किया। इसके अतिरिक्त प्रार्थी की सेवामुक्ति के समय कोई वरिष्ठता सूची भी नहीं बनाई गई। प्रार्थी से कनिष्ठतर श्रमिकों को सेवा में रखते हुए प्रार्थी को सेवामुक्त कर दिया। इस प्रकार विपक्षी द्वारा दिनांक 04.03.2005 को प्रार्थी की की गई सेवासमाप्ति पुनः अवैध प्रमाणित होती है। अतः दावा स्वीकार किया जावें। उन्होनें अपने तर्क के समर्थन में निम्नांकित न्यायिक दृष्टान्त प्रस्तुत किये :–

(1) 2014 (4) डब्ल्यू.एल.सी. (राजस्थान) 344 रामचन्द्र मीणा व अन्य बनाम स्टेट ऑफ राजस्थान

(2) 2001 (1) आर.एल.आर. 497 राजस्थान ललित कला अकादमी बनाम जज लेबर कोर्ट

(3) (1987) 4 (सुप्रीम कोर्ट कैसेज) 213 धारी ग्राम पंचायत बनाम सौराष्ट्र मजदूर महाराष्ट संघ

(4) ए.आई.आर. 2004 (सुप्रीम कोर्ट) 482 कृष्ण बहादुर बनाम मैसर्स पूर्णा थियेटर व अन्य

(5) 2010 (124) एफ.एल.आर. 700 हरजिन्दर सिंह बनाम पंजाब वेयर हाउसिंग कार्पोरेशन

(6) 2017 (2) डब्ल्यू.एल.सी. 700 (राजस्थान) एम.डी. अरबन कॉपरेटिव बैंक लिमिटेड जयपुर बनाम द जज औद्योगिक अधिकरण जयपुर

(7) 2006 डब्ल्यू.एल.सी. (यू.सी.) 491 सीताराम पारीक बनाम जज लेबर कोर्ट व अन्य

(8) सिविल अपील संख्या 6188/2019 सुप्रीम कोर्ट जयन्ती भाई रावजी भाई पटेल बनाम म्यूनिसिपल काउन्सिल नरखेड़ व अन्य – निर्णय तिथि 21.8.2019

(9) ए.आई.आर. 1968 (सुप्रीम कोर्ट) 1413 गोपाल कृष्णा जी केतकर बनाम मोहम्मद हाजी लतीफ व अन्य।

(10) सिविल अपील संख्या 3701/2015 (सुप्रीम कोर्ट) गोरीशंकर बनाम स्टेट ऑफ राजस्थान – निर्णय तिथि 16.04.2015

10. विपक्षी की और से प्रार्थी के तर्कों को अस्वीकार करते हुए यह कहा गया है की विपक्षी ने इस अधिकरण के समक्ष पूर्व में प्रस्तुत जवाब में यह कहा था कि बैंक के पास प्रार्थी के लिये कोई कार्य उपलब्ध नहीं है। कार्य न होने के कारण प्रार्थी की सेवामुक्ति धारा 25 (एफ) अधिनियम की पालना करते हुए की गई है। प्रदर्श– एम 3 पत्र के साथ नोटिस वेतन एवं छंटनी मुआवजे की राशि विगत वेतन सहित प्रार्थी को दी गई है। जिसका प्रमाण प्रदर्श– एम 1 डाक वितरण पुस्तिका में प्रार्थी के हस्ताक्षरों के रूप में उपलब्ध है। प्रार्थी ने अपनी प्रतिपरीक्षा में यह स्वीकार किया है कि प्रदर्श– एम 1 पर उसके हस्ताक्षर है। उसे जो चेक दिये गये थे वह उसने दूसरी बैंक में डाले थे। इस स्थिति में जब प्रार्थी चेकों को अपने खाते में जमा करवाना स्वीकार कर रहा हो, ये प्रमाणित हो जाता है कि दोनों चेकों की राशि 24,120 रूपये व 4,580 रूपये का प्रार्थी को भुगतान हो चुका है। चूंकि प्रार्थी एक अंशकालीन कर्मचारी था और विपक्षी के पास कोई कार्य शेष नहीं था, इसलिये उसे सेवामुक्त किया जाना आवश्यक था। अधिनियम की धारा 25 (एफ) के प्रावधानों का अनुपालन करते हुए की गई सेवासमाप्ति वैध है। प्रार्थी ने ऐसी कोई साक्ष्य प्रस्तुत नहीं की है कि उससे कनिष्ठतर श्रमिक को सेवामुक्ति के बाद नियोजन में रखा गया हों साथ ही केन्द्र सरकार द्वारा संदर्भित विवाद में भी यह बिन्दु सम्मिलित नहीं है इसलिये अधिकरण को संदर्भित विवाद तक ही सीमित रहना चाहिये। उन्होने अपने तर्क के समर्थन में निम्नांकित न्यायिक दृष्टान्त प्रस्तुत किये :–

(1) (2014) 7 (सुप्रीम कोर्ट कैसेज) 190 हरी नन्दन प्रसाद व अन्य बनाम एफ.सी.आई. व अन्य

(2) डब्ल्यू.एल.सी. (राजस्थान) 2000 (यू.सी.), 30 हवासिंह बनाम द एड्मिनिस्ट्रेटर कृषि उपज मण्डी समीती, सादुलपुर

(3) आर.एल.आर. 2001 (1) 154 रामगोपाल सैनी बनाम दी जज लेबर कोर्ट नं. 2 जयपुर व अन्य

11. उभयपक्ष के तर्कों, साक्ष्य एवं न्यायिक दृष्टान्तों में पारित विधि पर मनन के उपरान्त इस विवाद में निम्नलिखित विचारणीय बिन्दु उत्पन्न हुए है :–

बिन्दु संख्या 1 :– क्या प्रार्थी को विपक्षी द्वारा पूर्वाग्रह ग्रस्त होकर दुर्भावनापूर्वक दिनांक 04.03.2005 को सेवामुक्त किया गया जो अनुचित श्रम व्यवहार है ?

बिन्दु संख्या 2 :– क्या दिनांक 04.03.2005 को प्रार्थी को सेवामुक्त करते समय अधिनियम की धारा 25 (एफ) के प्रावधानों के अनुरूप विपक्षी द्वारा नोटिस वेतन एवं छंटनी प्रतिकर का भुगतान नहीं किया गया ?

बिन्दु संख्या 3 :– क्या प्रार्थी की सेवासमाप्ति के समय विपक्षी ने प्रार्थी से कनिष्ठतर श्रमिकों को सेवा में रखा तथा सेवा समाप्ति के पश्चात नये श्रमिकों का भी नियोजित किया ?

बिन्दु संख्या 4 :– अनुतोष ?

12. उभयपक्ष के तर्कों साक्ष्य के परिशीलन एवं न्यायिक दृष्टान्तों में पारित विधि पर मनन के उपरान्त विचारणीय बिन्दुओं पर निर्णय निम्नानुसार है :–

<u>विचारणीय बिन्दु संख्या 1 :–</u>

इस बिन्दु के अन्तर्गत यह विचारणीय है कि क्या प्रार्थी को दुर्भावनापूर्वक एवं पूर्वाग्रह ग्रस्त होकर इस अधिकरण के अधिनिर्णय के अनुपालन के पश्चात उसी दिन अर्थात दिनांक 04.03.2005 को विपक्षी द्वारा सेवामुक्त कर दिया जाना अनुचित श्रम–अभ्यास है ? प्रार्थी की ओर से यह कहा गया है कि दिनांक 04.03.2005 को उसे बिना किसी कारण सेवामुक्त कर दिया गया। विपक्षीगण की यह कार्यवाही दुर्भावनापूर्वक अनुचित श्रम अभ्सास है। विपक्षी ने अपने साक्ष्य में यह कहा है कि प्रार्थी को दिनांक 04.03.2005 को प्रदर्श– एम 3 पत्र जारी किया गया जिसमें यह अंकित है कि चूंकि बैंक के पास प्रार्थी के लिये कोई कार्य उपलब्ध नहीं है, ऐसी स्थिति में प्रार्थी को बैंक के नियोजन में और अधिक समय नियोजित रखा जाना संभव नहीं है। प्रार्थी की

ओर से इस सम्बन्ध में माननीय सर्वोच्च न्यायालय द्वारा पारित निर्णय धारी ग्राम पंचायत बनाम सोराष्ट्र मजदूर महाजन संघ तथा माननीय राज. उच्च न्यायालय द्वारा इसी निर्णय पर आधारित निर्णय रामचन्द्र मीणा व अन्य बनाम स्टेट ऑफ राजस्थान प्रस्तुत किया गया है। माननीय उच्चतम न्यायालय ने इस निर्णय में यह कहा है कि याचीगण जो लिपिक के पद पर सेवारत थें, की सेवासमाप्ति के उपरान्त उन्हें उच्च न्यायालय द्वारा भविष्य में होने वाली रिक्तियों पर अवशोषित कर लिये जाने का निर्णय दिया गया था, किन्तुं सेवा में पुनर्स्थापन के तुरन्त बाद याचीगण की सेवासमाप्ति छंटनी के माध्यम से किया जाना दुर्भावनापूर्ण है। इसी प्रकार रामचन्द्र मीणा व अन्य बनाम स्टेट ऑफ राजस्थान के निर्णय में माननीय राज. उच्च न्यायालय ने श्रम न्यायालय द्वारा पारित सेवा में पुनः स्थापन के अधिनिर्णय के उपरान्त उसी दिन सेवा का समापन किया जाना विद्वेष पूर्ण माना है। इन दोनों निर्णयों में वर्णित तथ्य हस्तगत विवाद के तथ्यों से भिन्न तथ्यों पर आधारित है क्योंकि रामचन्द्र मीणा के निर्णय में याची की सेवा विपक्षी द्वारा विनियमित की जा चुकी थी। इस विनियमन के उपरान्त भी छंटनी के आधार पर सेवा का समापन विद्वेष पूर्ण माना गया। धारी ग्राम पंचायत बनाम सोराष्ट्र मजदूर महाजन संघ के निर्णय में भी कर्मकार को विपक्षी नियोजक द्वारा दी गई सहमति के आधार पर 2/3 विगत वेतन सहित सेवा में पुनःस्थापित किया जाने का उच्च न्यायालय ने आदेश दिया था। इस पर भी पुनः स्थापन के तुरन्त बाद सेवासमाप्त किया जाना दुर्भावनापूर्वक माना गया। हस्तगत विवाद में याची अंशकालीक दैनिक वेतन भोगी कर्मचारी है जिसकी साप्ताहिक सेवा अवधि छः घण्टे मात्र होना कहा गया है। याची की सेवा कार्य उपलब्ध ना होने के आधार पर समाप्त की गई है। विपक्षी का यह आधार प्रारम्भ से ही रहा है कि कार्य उपलब्ध न होने से प्रार्थी को नियोजन में रखा जाना सम्भव नहीं है। इस स्थिति में विपक्षी का पूर्वाग्रह ग्रस्त होना अथवा दुर्भावनापूर्वक सेवासमाप्त करना प्रमाणित नहीं माना जा सकता है।

13. विपक्षी की ओर से प्रस्तुत निर्णय हरी नन्दन प्रसाद व अन्य बनाम एफ.सी.आई. व अन्य में माननीय उच्चतम न्यायालय ने यह कहा है कि ऐसे कर्मकारों को जो दैनिक वेतन भोगी थे और जिनकी सेवायें काफी पहले समाप्त कर दी गई। सेवासमाप्ति को इस तकनीकी आधार पर अवैध ठहराया गया कि नियोजक ने अधिनियम की धारा 25 (एफ) के प्रावधानों के पालना नहीं की – तो ऐसे कर्मकारों को सेवा में पुनर्स्थापना किया जाने का अनुतोष दिया जाना कठिन होगा। माननीय उच्चतम न्यायालय ने इसी विधि में यह भी कहा है कि जब सेवासमाप्ति मात्र इसी आधार पर अवैध पाई गई हो कि छंटनी प्रतिकर एवं नोटिस वेतन का भुगतान अधिनियम की धारा 25 (एफ) के प्रावधानों के अन्तर्गत नहीं किया गया था, तो ऐसी स्थिति में कर्मकार की सेवा में पुनर्स्थापना के उपरान्त भी प्रबन्धन के समक्ष यह विकल्प खुला रहता है कि वह कर्मकार की सेवा छंटनी प्रतिकर एवं नोटिस वेतन का भुगतान करने के पश्चात कर सकें। ऐसा कर्मकार चूंकि दैनिक वेतन के आधार पर कार्यरत था इसलिये सेवा में पुनः स्थापित हो जाने के उपरान्त भी उसे सेवा में विनियमन का अधिकार नहीं है। विपक्षी का पूर्वाग्रह ग्रस्त होकर अथवा दुर्भावनापूर्वक सेवा समाप्त करना प्रमाणित नहीं होता है।

14. माननीय राज. उच्च न्यायालय द्वारा राजस्थान ललित कला अकादमी बनाम जज लेबर कोर्ट निर्णय में तथ्यों का विस्तृत वर्णन उपलब्ध नहीं हो सका है। याचिका को ग्रहण की अवस्था पर ही माननीय उच्च न्यायालय द्वारा अस्वीकार कर दिया गया था। विपक्षी की सेवा में नियुक्ति की प्रकृति क्या थी और किन परिस्थितियों में सेवासमाप्ति की गई – की जानकारी नहीं हो सकी है अतः यह निर्णय प्रार्थी के पक्ष समर्थन हेतु पर्याप्त नहीं है। अतः यह बिन्दु प्रार्थी के विरूद्ध निर्णित किया जाता है।

<u>विचारणीय बिन्दु संख्या 2 :–</u>

इस बिन्दु के अन्तर्गत यह विवेचनीय है कि क्या विपक्षी द्वारा दिनांक 04.03.2005 को प्रार्थी की सेवासमाप्त करते समय अधिनियम की धारा 25 (एफ) के प्रावधानों के अनुरूप नोटिस वेतन एवं छंटनी प्रतिकर का भुगमात नहीं किया गया ?

15. प्रार्थी ने अपने साक्ष्य में यह कहा है कि दिनांक 04.03.2005 को सेवामुक्त किये जाते समय उसे ना तो नोटिस वेतन का भुगतान किया और ना ही छंटनी मुआवजे का भुगतान किया। प्रार्थी यह भी कहता है कि दिनांक 04.03.2005 को उसे नोटिस वेतन व छंटनी प्रतिकर के रूप में बैंकर्स चेक नहीं दिया गया जो नोटिस वेतन एवं मुआवजे की राशि देना बताया गया है। यह राशि नियमानुसार देय राशि से कम भी है। इसके विपरित विपक्षी की और से साक्षी सुनिल गहलोत ने यह कहा है कि दिनांक 04.03.2005 को धारा 25 (एफ) अधिनियम के अन्तर्गत देय छंटनी मुआवजे की राशि व नोटिस–पे की एवज में कुल राशि 4,580 रूपये का भुगतान चेक संख्या 329262 प्रदर्श– एम–3 पत्र द्वारा किया गया। प्रदर्श– एम 3 पत्र प्रार्थी को पियोन बुक के जरिये डिलीवर किये गये थे। पियोन बुक प्रदर्श– एम 1 पर ''ए से बी'' और ''सी से डी'' हस्ताक्षर मोहम्मद महमूद आलम के है जो उसने मेरे सामने किये थे।'' इसी कम में प्रार्थी ने अपनी प्रतिपरीक्षा में यह स्वीकार किया है कि प्रदर्श– एम 1 पर ''ए से बी'' और ''सी से डी'' हस्ताक्षर उसी के हैं, किन्तु प्रार्थी यह कहता है कि ये हस्ताक्षर उससे जबरदस्ती 4–5 आदमियों ने मिलकर करवाये थे। दिनांक 04.03.2005 को प्रदर्श– एम 1 हस्ताक्षर उसने नहीं किये, बादे में करवाये।'' किन्तु प्रार्थी इस प्रकार 4–5 व्यक्तियों

द्वारा बलपूर्वक हस्ताक्षर करवाये जाने के सम्बन्ध में किसी से कोई परिवाद करने अथवा पुलिस में प्रथम सूचना देने के तथ्य से इन्कार करता है। प्रार्थी यह भी स्वीकार करता है कि प्रदर्श– एम 1 पियोन बुक ''ई से एफ'' और ''जी से एच'' उसके द्वारा लिखी गई बातें हैं। प्रार्थी यह भी स्वीकार करता है कि उसे जो चेक दिये गये थे उन्हें वह दूसरी बैंक में जमा करवाये थे। यह पी.एन.बी. की घाटगेट शाखा थी। प्रार्थी यह भी कहता है कि उसने डी.पी. पुजारी एवं श्याम नारायण माथुर वकील साहब से बैंक को नोटिस भेजा था। विपक्षी द्वारा यह नोटिस प्रदर्श– एम 4 के रूप में प्रदर्शित किया गया है। इस नोटिस में प्रार्थी के अभिभाषकगण ने दिनांक 04.03.2005 को 2 चेक क्रमशः 4,580 रूपये तथा 24,120 रूपये जो कि विगत वेतन छंटनी मुआवजा और नोटिस वेतन के रूप में विपक्षी द्वारा दिया जाना तो कहा है, लेकिन यह नहीं कहा है कि नोटिस में वर्णित चेक प्रार्थी को दिनांक 04.03.2005 को नहीं दिये गये हों। साक्ष्य की इस स्थिति में यह स्पष्ट है कि दिनांक 04.03.2005 को विपक्षी द्वारा प्रदर्श– एम 3 पत्र के साथ एक माह के नोटिस की एवज में एक माह के वेतन की राशि 900 रूपये और छंटनी मुआवजे की राशि 3650 रूपये तथा बकाया वेतन 30 रूपये कुल 4,580 रूपये बैंकर्स चेक के माध्यम से प्रार्थी को दिये गये जिसकी अभिस्वीकृति प्रार्थी ने डाक वितरण पुस्तिका प्रदर्श– एम 1 पर अपने हस्ताक्षर ''सी से डी'' स्थान पर और ''जी से एच'' पृष्ठांकन करते हुए दिनांक 04.03.2005 तिथि एवं समय 3.40 पी.एम. अंकित करते हुये हस्ताक्षर करते हुए की है। प्रदर्श– एम 1 में यह स्पष्ट लिखा गया है कि धारा 25 (एफ) के तहत एक माह का नोटिस एंव छंटनी मुआवजे की राशि तथा बकाया वेतन के साथ बैंक की सेवाओं से मुक्त करने का पत्र प्रार्थी को वितरित किया जा रहा है। साक्ष्य की इस स्थिति में प्रार्थी को 4,580 रूपये का बैंकर्स चेक दिनांक 04.03.2005 को ही प्रदर्श– एम 3 पत्र के साथ वितरित किया जाना प्रमाणित होता है।

16. अब प्रार्थी के प्रतिनिधि के इस तर्क का परीक्षण किया जाना अपेक्षित है कि नोटिस वेतन एवं छंटनी मुआवजे की देय राशि से कम राशि का भुगतान किया गया ?

17. यह विवादित नहीं है कि प्रार्थी को 900 रूपये मासिक वेतन पर सेवा में विपक्षी द्वारा रखा गया था। प्रार्थी का यह कथन है कि राज्य सरकार द्वारा न्यूनतम वेतन में वृद्धि कर दिये जाने के बाद भी उसे 900 रूपये मासिक वेतन दिया गया। मेरे अभिमत से प्रार्थी को देय वेतन में विपक्षी द्वारा वृद्धि किया जाना अथवा न किया जाना इस विवाद का विषय नहीं है। इसलिये विपक्षी द्वारा मासिक वेतन की दर 30 रूपये प्रतिदिन की दर से 900 रूपये मासिक संगणित करना अनुचित नहीं है। फरवरी 1998 से प्रार्थी ने स्वंय को नियोजित होना कहा है। इस तिथि को आधार मानकर सेवासमाप्ति की तिथि दिनांक 04.03.2005 तक प्रार्थी की कुल सेवा अवधि 7 वर्ष होती है। इस स्थिति में एक वर्ष की सेवा पूर्ण होने पर 15 दिन का वेतन छंटनी मुआवजे के रूप में देय होता है। विपक्षी का यह तर्क है कि प्रतिकर की गणना हेतु उन्होंने एक माह में 26 दिन मानकर दैनिक वेतन की गणना की तदनुसार 7 वर्ष की सेवा पर छंटनी मुआवजा दिया है जो 3634 रूपये 61 पैसे होता है। जिसे बढ़ाते हुए 3650 रूपये कर दिया गया।

18. इस प्रकार देय धनराशि की संगणना करने पर विपक्षी द्वारा दिया गया छंटनी मुआवजा 3650 रूपये देय राशि से 15 रूपये 39 पैसे अधिक प्रकट होता है। एक माह का नोटिस वेतन 900 रूपये तथा दिनांक 04.03.2005 को प्रार्थी का वेतन 30 रूपये योग करने पर 4,580 रूपये होते है जो विधि अनुरूप प्रार्थी को देय है। इसी राशि का भुगतान विपक्षी द्वारा प्रार्थी को बैंकर्स चेक के माध्यम से किया जाना भी साक्ष्य के पूर्वाक्त विवेचन से प्रमाणित पाया गया है।

19. प्रार्थी की और से प्रस्तुत माननीय सर्वोच्च न्यायालय द्वारा पारित निर्णय कृष्ण बहादुर बनाम मैसर्स पूर्णा थियेटर व अन्य में माननीय सर्वोच्च न्यायालय ने यह अभिमत व्यक्त किया है कि अधिनियम की धारा 25 एन (बी) के अन्तर्गत कर्मकार को छंटनी प्रतिकर का भुगतान यदि अपर्याप्त किया गया है तो चूंकि ये प्रावधान आदेशात्मक है इसलिये छंटनी अवैध मानी जावेगी। इस निर्णय में प्रतिपादित विधि पूर्णतः मार्गदर्शक है, किन्तु चूंकि विपक्षी द्वारा छंटनी मुआवजे एवं नोटिस वेतन का भुगतान प्रार्थी को देय राशि से भी अधिक किया गया है। तथ्यात्मक भिन्नता के कारण निर्णय में प्रतिपादित विधि प्रार्थी के पक्ष में नहीं है।

20. माननीय राज. उच्च न्यायालय ने सीताराम पारीक बनाम जज लेबर कोर्ट व अन्य के निर्णय में यह कहा है कि जब याची सेवासमाप्ति की तिथि से 7दिन पश्चात दिये गये छंटनी मुआवजे को स्वीकार कर भी ले, तो भी ऐसी स्वीकारोक्ति को छंटनी मुआवजे का विधिवत भुगतान (धारा 25 (एफ) अधिनियम के अनुसार) नहीं माना जा सकता। चूंकि विपक्षी द्वारा प्रार्थी को सेवासमाप्ति की तिथि को ही छंटनी प्रतिकर, नोटिस वेतन और विगत वेतन का भुगतान कर दिया गया है, इसलिये इस निर्णय में पारित विधि भी प्रार्थी के पक्ष को सहायक नहीं है। साक्ष्य और विधि की इस विवेचना के उपरान्तर विपक्षी द्वारा दिनांक 04.03.2005 को प्रार्थी के सेवासमापन के समय अधिनियम की धारा 25 (एफ) के प्रावधानों के अनुरूप नोटिस वेतन एवं छंटनी प्रतिकर का विधिवत भुगतान किया जाना प्रमाणित होता है। अतः यह विचारणीय बिन्दु प्रार्थी के विरूद्ध निर्णित किया जाता है।

विचारणीय बिन्दु संख्या 3 :–

इस बिन्दु के अन्तर्गत यह विचारणीय है कि क्या प्रार्थी की सेवासमाप्ति के समय विपक्षी ने प्रार्थी से कनिष्ठतर कर्मकार को नियोजित रखा तथा प्रार्थी की सेवामुक्ति के पश्चात नये श्रमिकों को भी नियोजित किया ?

21. इस सम्बन्ध में सर्वप्रथम विपक्षी का यह आक्षेप है कि चूंकि भारत सरकार द्वारा इस अधिकरण को एक सीमित विवाद अधिनिर्णयन हेतु सन्दर्भित किया गया है इसलिये सन्दर्भ से परें जाकर इस अधिकरण को यह क्षेत्राधिकार प्राप्त नहीं है कि वह धारा 25 (जी) व (एच) तथा नियम 77 व 78 के अनुपालन का परीक्षण करें। इसके विपरीत प्रार्थी के यह तर्क हैं कि इस अधिकरण को धारा 25 (एफ) अधिनियम के प्रावधानों के साथ–साथ धारा 25 (जी) व (एच) के अन्तर्गत किये गये प्रावधानों के अनुपालन सम्बन्धी बिन्दु का परीक्षण करने का क्षेत्राधिकार भी प्राप्त है। उन्होंने इस सम्बन्ध में माननीय राज. उच्च न्यायालय द्वारा पारित निर्णय एम.डी. अरबन कॉ–ऑपरेटिव बैंक लि. बनाम जज औद्योगिक अधिकरण में पारित विधि का अवलम्ब लिया। इस निर्णय में माननीय राज. उच्च न्यायालय ने यह कहा है कि यद्वपि अधिकरण को निर्देश की सीमाओं में ही रहना होता है तथापि अधिनियम की धारा 25 (एफ) के अनुपालन के क्रम में अधिकरण द्वारा धारा 25 (जी), (एच) 33 (1) व 33 (2) के अपालन का परीक्षण किया जाना भी अवैध नहीं है। विशेषकर तब जबकि धारा 25 (एफ) व (जी) का अतिक्रमण हुआ हो। इस विधि के प्रकाश में यह मार्गदर्शन मिलता है कि हस्तगत विवाद में अधिनियम की धारा 25 (एफ) के साथ साथ धारा 25 (जी) व (एच) के प्रावधानों के अनुपालन के सम्बन्ध में यह अधिकरण परीक्षण करने हेतु क्षेत्राधिकार–प्राप्त है।

22. प्रार्थी ने अपने साक्ष्य में यह कहा है कि उसे सेवामुक्त किये जाते समय विपक्षी के अधीन अनेक जूनियर श्रमिक कार्यरत थे तथा उसे सेवामुक्त कर दिये जाने के पश्चात नये श्रमिकों को भर्ती किया गया है। विपक्षी द्वारा श्रमिकों की कोई वरिष्ठता सूची भी जारी नहीं की गई। उल्लेखनीय है कि प्रार्थी ने एक साधारण सा कथन जूनियर श्रमिकों के कार्यरत होने और नवीन श्रमिकों की भर्ती किये जाने के सम्बन्ध में किया है, लेकिन इस सम्बन्ध में न तो उन श्रमिकों के नाम और न हीं उनकी नियुक्ति तिथि मौखिक रूप से भी वर्णित की है, और कोई प्रलेखीय प्रमाण भी प्रस्तुत नहीं किया है। वरिष्ठता सूची के सम्बन्ध में प्रार्थी ने किसी ऐसे कनिष्ठ श्रमिक का नाम ही नहीं लिया है जिसे उसकी सेवासमाप्ति के समय सेवा में रखा गया हो। प्रार्थी ने ऐसे किसी श्रमिक का भी नामोन्लेख नहीं किया है जिसे उसकी सेवासमाप्ति के उपरान्त विपक्षी ने नियोजित किया हो। विपक्षी के साक्षी सुनील गहलोत ने अप्रेल 2003 में शाखा में ज्वाईन करते समय पार्ट–टाईम कर्मचारी करर्यरत होना अवश्य कहा है किन्तु दिनांक 04.03.2005 को श्रीमती मीना नामक कर्मचारी को बैंक की शाखा में कार्यरत होने का तथ्य ध्यान न होने के कारण स्वीकार नहीं किया है। इसके अतिरिक्त यह भी महत्वपूर्ण है कि श्रीमती मीना नाम की कर्मचारी प्रार्थी से कनिष्ठ थी अथवा वरिष्ठ इस तथ्य का भी साक्षी को ध्यान नहीं है। साक्षी सुनील गहलोत ने अपने प्रतिपरीक्षण में यह स्पष्ट कहा है कि उसकी जानकारी में प्रार्थी से जूनियर कोई कर्मचारी कार्यरत नहीं था। विपक्षी की और से प्रस्तुत निर्णय रामगोपाल सैनी बनाम दी जज लेबर कोर्ट नं. 2 जयपुर में माननीय राज. उच्च न्यायालय की खण्डपीठ ने यह अधिमत दिया है कि जब याची कर्मकार किसी प्रलेखीय साक्ष्य से यह प्रमाणित करने में पूर्णतः विफल रहा हो कि नियोजक ने अधिनियम की धारा 25 (जी) व (एच) का उल्लंघन किया है, तो मात्र कनिष्ठ व्यक्तियों के नाम का उल्लेख करना जिन्हें याची की छंटनी के उपरान्त नियोजित किया गया हो, उद्देश्य की पूर्ति नहीं करता। इस निर्णय में पारित अधिमत के प्रकाश में चूंकि याची ने विपक्षी द्वारा धारा 25 (जी) व (एच) अधिनियम के प्रावधानों का उल्लंघन किया जाना किसी प्रलेखीय साक्ष्य से प्रमाणित नहीं किया है। इसलिये प्रार्थी उस पर आरोपित सिद्धिभार के उन्मोचन में विफल रहा प्रमाणित होता है। प्रार्थी ने अपने अभिवचन और साक्ष्य में किसी कर्मकार का उससे कनिष्ठ होने और कनिष्ठ को सेवा में नियोजित करना नामजद नहीं कहा है। ऐसी स्थिति में अंशकालीन दैनिक वेतनभोगी कर्मचारियों के सम्बन्ध में जो कि किसी एक वर्ग से सम्बन्धित ही न हो, की वरिष्ठता सूची जारी किये जाने का कोई औचित्य व प्रयोजन भी प्रकट नहीं होता है। इस विवेचन के उपरान्त यह बिन्दु प्रार्थी के विरूद्ध निर्णित किया जाता है।

23. **अनुतोष** :– उपयुर्क्त विचारणीय बिन्दु संख्या 1, 2 व 3 पर प्राप्त विवेचित निष्कर्ष के आधार पर यह प्रमाणित हुआ है कि दिनांक 04.03.2005 को विपक्षी द्वारा की गई प्रार्थी की सेवासमाप्ति दुर्भावनापूर्ण अनुचित श्रम व्यवहार नहीं है तथा विपक्षी ने प्रार्थी की सेवासमाप्ति के समय अधिनियम की धारा 25 (एफ) (जी) तथा (एच) के प्रावधानों का उल्लंघन भी नहीं किया। इसलिये विपक्षी द्वारा दिनांक 04.03.2005 को प्रार्थी की सेवा का समापन पूर्णतः वैध एवं न्यायोचित है। इस निष्कर्ष के उपरान्त प्रार्थी विपक्षी से कोई अनुतोष प्राप्त करने का अधिकारी नहीं है।

24. प्रार्थी की और से प्रस्तुत निर्णय हरजिन्दर सिंह बनाम पंजाब वेयर हाउसिंग कार्पोरेशन, जयन्ती भाई रावजी भाई पटेल बनाम म्यूनिसिपल काउन्सिल नरखेड़ व अन्य तथा गोरीशंकर बनाम स्टेट ऑफ राजस्थान में माननीय सर्वोच्च न्यायालय द्वारा पारित विधि चूंकि सेवासमाप्ति के अवैध घोषित किये जाने के उपरान्त सेवा में पुनः–स्थापन एवं विगत वेतन प्रदान किये जाने के

सम्बन्ध में है, इस विवाद के तथ्यों से भिन्नता के कारण प्रार्थी के पक्ष में सहायक नही है क्योंकि प्रार्थी की सेवासमाप्ति अवैध नहीं पायी गयी।

आदेश

25. इस निष्कर्ष के उपरान्त दिनांक 04.03.2005 को तत्कालीन बैंक दी बैंक ऑफ राजस्थान लिमिटेड वर्तमान में आईसीआईसीआई बैंक लिमिटेड जयपुर के प्रबन्धन द्वारा प्रार्थी की सेवा में पुनर्स्थापना के तुरन्त बाद की गई सेवासमाप्ति वैध एवं न्यायोचित है। प्रार्थी विपक्षी से कोई अनुतोष पाने का अधिकारी नहीं है। सन्दर्भित विवाद का अधिनिर्णय इसी प्रकार किया जाता है।

26. अधिनिर्णय तद्नुसार पारित किया जाता है। श्रम मन्त्रालय द्वारा इस मामले में न्यायनिर्णयन हेतु संदर्भित विवाद का उत्तर उपर्युक्तानुसार दिया जाता है।

27. अधिनिर्णय की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17 (1) के अन्तर्गत प्रकाषनार्थ प्रेषित की जावे।

राधा मोहन चतुर्वेदी, पीठासीन अधिकारी

नई दिल्ली, 25 नवम्बर, 2019

का.आ. 2068.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ टोक्यो मित्सुबिश यू एफ जे लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2 मुम्बई के पंचाट (संदर्भ संख्या 14/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.11.2019 प्राप्त हुआ था।

[सं. एल—12012/311/2003—आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 25th November, 2019

S.O. 2068.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2004) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court* No. 2-Mumbai as shown in the Annexure, in the industrial dispute between the management of Bank of TOKYO–MITSUBISHI UFJ Ltd. and their workmen, received by the Central Government on 25.11.2019.

[No. L-12012/311/2003-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer/Judge

REFERENCE NO.CGIT-2/14 of 2004

EMPLOYERS IN RELATION TO THE MANAGEMENT OF BANK OF TOKYO-MITSUBISHI UFJ LTD

The General Manager;
Bank of Tokyo-Mitsubishi UFJ LTD.
15th Floor, Hoechst House,
193, Vinay K. Shah Marg,
Nariman Point,
Mumbai- 400 021.

AND

THEIR WORKMEN

The General Secretary
Bank of Tokyo-Mitsubhishi Employees Association
15th Floor, Hoechst House,
193, Vinay K. Shah Marg,
Nariman Point,
Mumbai- 400 021.

APPEARANCES:

FOR THE EMPLOYER : Mr. L.L.D'Souza, Representative

FOR THE WORKMEN : Mr. Vinay Menon, Advocate

Mumbai, dated the 30th August, 2019

AWARD PART-II

The Government of India, Ministry of Labour & Employment by its Order No.L-12012/311/2003-IR (B-I), dated 22.02.2004 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following industrial dispute to this Tribunal for adjudication:

> *"Whether the action of the management of Bank of Tokyo-Mitsubishi Ltd, Mumbai in dismissal of Shri Viswanath Shetty is justified? If not, what relief the workman is entitled to?"*

2. After the receipt of Reference notices were issued to both the parities. In response to notice second party union has filed Statement of Claim Ex-11. According to the second party union, the concerned workman was appointed in the first party Bank on and from 15/06/1984 in the post of Clerk. He was elected as General Secretary of second party Union in 1986.He took active part and keen interest in the affairs of the Union so as to ensure proper industrial peace inter-se the Bank and its employees. He being the General Secretary of second party would question the officers of the bank, in case with regards to service conditions of employees concerned. This became much of eye-sore to the management and the first party connived with the officers, so as to remove him out of way.

3. According to the workman, ultimately in 1993 the first party Bank put an accusation to workman alleging that he had committed forgery and as such lodged a criminal case which is now pending before Hon'ble Court. He was suspended and prevented from entering the first party Bank. Thereafter he contested election, once again for the post of General Secretary and was elected as General Secretary in the year 2001 but on 25/1/2001 when the workman attempted to enter the premises he was confronted by Mr. M. Izaki, who showed him two letters, one which contained the permission to enter the union office and other a charge sheet alleging misappropriation and causing loss to the Bank. He was also issued the letter dated25th September, 2001 on 5/10/2001 wherein it is alleged that somewhere in the month of May, 1999 workman had forwarded certain medical bills to the Bank for reimbursement which were false and as such he had committed an act of gross misconduct within the meaning of Para 19.5(j) & (m) of the Bipartite Settlement dated, 19th October, 1966.

4. According to the workman he was called upon by the First Party to show cause, within 10 days of receipt of the said letter. He has filed a detailed explanation on 30th October, 2001. However thereafter the first party issued a Charge Sheet, dated 6/12/2001, to him alleging that he was guilty of misconduct as enumerated in the Bi-partite settlement and was informed that one Mr. Kishore K. Bijlani of the New-Delhi Branch was authorized to hold and conduct the enquiry as Enquiry Officer. The enquiry was commenced on 3/1/2002 at 11.30 a.m. and same was attended by him. On that date his Defence Representative, Mr. Sankar Joshi, had to go to his native place. Accordingly, the subsequent procedure of the enquiry commenced and workman duly participated in the same.

5. It is contention of the workman that his Defence Representative, Shri Joshi, could not remain present on fixed dates due to his personal difficulties. Despite the absence of the Defence Representative, he took part in the enquiry and took full note of the proceedings. Thereafter it came to be adjourned to 3/4/2002 despite the fact that his defense representative could not remain present since he was required to complete certain religious rituals pertaining to his father's demise. The opportunity has not been given to him and the management had conducted the inquiry in disregard to the Principles of Natural Justice. It is contended that inquiry was conducted in colourable exercise of management's rights and in hasty manner.

6. According to the workman Inquiry Officer denied his request to grant him time so that he could bring his defence representative. Thus, the said so called inquiry is nothing but a farce created in the eyes of law. This action of management shows that first party has engaged in unfair labour practices in total violation of Principles of Natural Justice. As such the findings given by the Enquiry Officer Shri Kishore Bijlani are totally perverse as the same are based on the statements and documents which have not been proved. According to the workman the findings of the Enquiry Officer are perverse and thus deserve to be set aside. He therefore, prays that the inquiry be declared not fair and proper and the findings of Enquiry officer be declared perverse and punishment be set aside with full back wages.

7. The first party resisted the Statement of Claim by filing their Written Statement at Ex-12.According to them the workman has submitted medical bills of his mother's treatment in Ameya Maternity and Surgical Nursing Home. The details of the bills are as follow.

Bill No.	Date	Amount
458	13th May 1999	10,150/-
480	28th June 1999	11,500/-
700	2nd April 2000	22,850/-

8. Accordingly he was paid by the Bank, the following amounts in respect of the above bills submitted by him:

Bill No.	Date	Amount
458	10th June 1999	7,405/-
480	28th August 1999	8,490/-
700	26th May 2000	15,591/-

9. According to the first party it was further brought to the notice of Bank that they were false bills. They directed the workman to show cause within 10 days of receipt of the show cause notice as to why disciplinary action should not be taken against him for committing an Act of gross misconduct within the meaning of Para 19.5 (j) and (m) of the Bipartite Settlement dated 19th October 1966. The workman submitted a letter dated 8th October, 2001to the Disciplinary Authority and requested the bank to furnish copies of all the bills. The Bank forwarded the copies of the bills vide Bank's letter dated 8th October, 2001. The workman thereafter submitted a letter dated 10th October, 2001 and requested for further period of 10 days time to submit his reply to the show cause notice. He was granted 10 days time and he was directed to submit his reply to the show cause notice by letter dated 25th October, 2001. Again he requested for additional period of 5 days to submit his reply and his request was granted by the Bank. Thereafter the workman had submitted his reply on 30th October, 2001. The Disciplinary Authority after perusing the reply dated 30th October, 2001 to show cause notice did not find any satisfactory reasons and therefore issued a charge sheet dated 6th December, 2001 alleging various charges level against him as specified in the charge sheet. The workman was charged with acts of gross misconduct within the meaning of Para 19.5 (j) and (m) of the Bi-partite Settlement dated 19th October, 1966.Workman appeared before Enquiry Officer, he was allowed to defend himself by his defense representative of his choice. However, in the entire enquiry proceedings, 13 different dates were given but the workman was unable to bring his defence representative or an advocate of his choice who was also permitted to defend himself in the inquiry. Presenting Officer of the Bank submitted the documents before the Enquiry Officer in support of the charges leveled against him and a copy of the same was also supplied to the workman. Workman was also permitted to inspect the original documents which were submitted by the Presenting Officer. Enquiry officer directed the workman to produce certain documents which were in his possession and the relevancy of those documents pertaining to the charges leveled against the workman but he failed to produce the documents till the date of enquiry proceedings. Presenting Officer of the Bank examined four management witnesses in support of the charges leveled against him. However workman failed to cross examine any of the management witnesses. On 23rd May, 2002 when the second management witness Dr. F.E. Palia was examined by the Presenting Officer, before the Enquiry Officer,the workman chose to remain absent in enquiry proceedings and walked out of the enquiry room without any valid reasons and without cross examining the management witness and without signing the proceedings.

10. According to the first party management, workman did not avail of the opportunity given to him to lead evidence on his behalf and did not even file any documents in support of the case. He failed to bring his defence representative in the inquiry even for once. Thereafter the Presenting Officer submitted his written brief on 17th July 2002 the workman sought time to submit his written reply. He again sought further time vide letter dated 25th July, 2002 and even he also leveled false allegations against the Enquiry Officer. In the circumstances the Enquiry Officer after waiting till 5th August, 2002 therefore had no other option but to finalize the report without written brief of the workman. After analyzing the oral evidence on record, the Enquiry Officer was of the view that charges as leveled against the workman were conclusively proved and accordingly submitted his report dated 5th August, 2002. Disciplinary Authority thereafter

forwarded the report of the enquiry along with the proposed order of dismissal dated 20th August, 2002 and workman was informed that in terms of Para 12(a) of Bi-partite Settlement dated 10th April, 2002, he was given opportunity of a hearing regarding the proposed punishment and therefore he was directed to appear before the Disciplinary Authority on 30th August, 2002 in person. He was granted time to submit his written arguments. After considering the written submissions of the workman the Disciplinary Authority vide his Order dated 12th September, 2002 passed the order of dismissal by way of punishment for gross misconduct under Clause 19.6(a) of the Bi-partite Settlement dated 19th October, 1966. The workman thereafter filed his appeal dated 18th October, 2002 to the Appellate Authority. However the Appellate Authority was of the view that there was no violation of any procedure of the Bi-partite Settlement and the I.D. Act, 1947and entire procedure was scrupulously followed. The Appellate Authority concurred with findings of the Disciplinary Authority, confirming the punishment of dismissal passed by Disciplinary Authority by its order dated 18th December, 2002. Thus the contention of first party is that the punishment as awarded by the Disciplinary Authority was justified and proportionate to charges leveled against him. So according to them contents of the Statement of Claim are false.

11. This tribunal has passed Award Part – I on 15.7.16 holding thereby that the Enquiry is fair and proper and the Findings of the Inquiry Officer are not perverse. Parties are directed to argue / lead evidence on the point of quantum of punishment.

12. Thereafter both the parties have not adduced any evidence. However, I heard the arguments of both the parties. In view of their submissions, I reproduce the following issues at Ex.14 along with my findings thereon for the reasons to follow.

2.	Whether punishment of dismissal is proportionate ?	Yes
3.	If not, what relief second party is entitled to get ?	No
4.	What order ?	As per final order

REASONS

ISSUE NO. 3 :-

13. It is well settled that jurisdiction of the Labour court u/s. 11 (a) of I.D. Act is not unlimited. As such section 11 (a) does not confer arbitrary power on the Industrial Court or Labour Court. The jurisdiction is supervisory in nature to be exercised where the finding of disciplinary enquiry is not based on evidence. Where there has been transgression of principles of natural justice and where the finding is perverse in the sense that no reasonable body of the persons would have arrived at such a findings, then jurisdiction u/s. 11 (a) of I.D. Act can be exercised.

14. Here in the instant case the competent authority has considered the charges leveled against the workman as grave and serious and confirmed the penalty of dismissal from service. The charges leveled against the workman were that he submitted bills of medical treatment for Mrs. Deviki Shetty for treatment at Ameya Maternity & Surgical Nursing Home and thereafter it was brought to the notice of the bank that those bills were false. During enquiry those bills were proved to be false and it is thus alleged that the concerned workman lost the confidence. Obvious result of the charges being proved in the domestic enquiry held into charges framed against the workman is that of complete loss of confidence in the concerned workman.

15. Learned Counsel for the first party submitted that the Labour Court cannot substitute the penalty imposed by the employer when the labour court found the charges to have been clearly established. In the context reliance is placed on the decision in case of Janatha Bazar South Kanara Central Co-op. Wholesale Stores and Ors. V/s. Secretary, Sahakari Naukarara Sangh & Ors. – 2007 – SCC – 517.

16. Learned Counsel for the first party seeks to rely on the decision in case of LIC of India V/s. R. Dandapani – 2006 – 13 – SCC – 613 wherein it is held that Industrial Court and Labour Courts are not forums whose task is to dole out private benevolence to workman found guilty of misconduct by them. In that case the workman was found guilty of misconduct. Compassion was awarded by the tribunal and endorsed by the Hon'ble H.C. It was held that the compassion

shown by the tribunal and endorsed by the Hon'ble H.C was held fully misplaced. In that case the conduct of the concerned workman disclosed gross disobedience and proved misconduct was one of deliberate disobedience of the orders of the superiors compounded by adamant attitude in remaining absent for a period of 233 days. In the facts it was considered that the punishment awarded was proportionate and that the concerned workman was not entitled to receive any benefit under the scheme.

17. Learned Counsel for the first party submitted that the concerned workman was an employee of the bank and therefore in banking business absolute devotion, diligence, integrity and honesty needs to be observed by every bank employee and in particular bank officer. If this is not observed the confidence of the public /depositors would be impaired. When a person is found guilty of mis-appropriating funds then there is nothing wrong in awarding punishment of dismissal.

18. Learned Counsel for the first party seeks to rely on the decision in case of Divisional Controller, KSRTC V/s. A.T. Mane (2006) – SCC – 254.

19. The question therefore is whether the punishment imposed upon the concerned workman is shockingly excessive and dis-proportionate to the gravity of proved misconduct. The concerned employee was holding the position of trust. He was dealing with public money or was engaged in financial transactions. Therefore while doing his duty the highest degree of integrity and trustworthiness is must. In such cases the loss of confidence in the employee will be an important and relevant factor. If employee is dishonest then he is not fit to continue in service.

20. Considering all these facts and the legal position cited above, I find that punishment imposed upon the concerned workman on account of misconduct cannot be said to be shockingly disproportionate. Considering the gravity of charges & scope of interference, punishment is imposed by the disciplinary authority, I find that the punishment imposed upon him is adequate to the misconduct and as such the punishment of dismissal is proportionate. Issue No.3 is therefore answered accordingly as indicated against it.

ISSUE NO. 4 & 5:-

21. In view of my findings to issue No.3 and Part – I Award, the workman is not entitled to any relief, so the reference is liable to be rejected with no order as to costs. Hence order.

ORDER

Reference is rejected with no order as to costs.

Date: 30.08.2019

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 25 नवम्बर, 2019

का.आ. 2069.–औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2 मुम्बई के पंचाट (संदर्भ संख्या 13/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25.11.2019 प्राप्त हुआ था।

[सं. एल–12012/115/2005–आईआर (बी-1)]

बी. एस. बिष्ट, अवर सचिव

New Delhi, the 25th November, 2019

S.O. 2069.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2006*)* of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 25.11.2019.

[No. L-12012/115/2005-IR(B-1)]

B. S. BISHT, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO.CGIT-2/13 of 2006

EMPLOYERS IN RELATION TO THE MANAGEMENT OF STATE BANK OF INDIA

The Deputy General Manager
State Bank of India, Pune Zonal Office,
Gulmohar Apartments, East Street,
Opp. Bombay Garage, Pune,
Pune.

AND

THEIR WORKMEN

The General Secretary,
SBI Staff Union, C/o. U.P. Naik No.68/86,
Harkoovarbai Building, Pandit Bakhale Path,
Thakurdwar Road, Mumbai – 02.
Mumbai.

APPEARANCES:

FOR THE EMPLOYER : Shri M.G. Nadkarni, Advocate

FOR THE WORKMEN : Mr. M.B. Anchan, Advocate

Mumbai, dated the 23rd August, 2019

AWARD PART – I I

1. The Government of India, Ministry of Labour & Employment by its Order No.L-12012/115/2005-IR(B-I) dated 16.02.2006 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

> *"Whether the action of the management of SBI, in imposing the penalty of terminating the services of B.M. Pawar is proper and legally justified ? If not, to what relief is the workman entitled to ?"*

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, the second party workman filed his statement of claim at Ex-5.

3. It appears that the second party workman is appointed in the bank service on 12.8.1985 as a Clerk-cum-Typist. While working as Clerk-cum-Typist at Igatpuri branch of the bank, he was suspended from service by order dated 1.12.1994 for alleged fraud at Igatpuri branch of forging withdrawals etc. Subsequently, he was served with charge sheet-cum-show cause notice dated 15.3.1996 for alleged misconduct. The charges have been framed against him and the bank issued him charge-sheet dated 20.6.96. The bank has also filed FIR with Igatpuri police station on 20.1.1995. The workman in his reply dated 6.5.1996 to the sheet-cum-show cause notice had denied the charges. The summary of charges framed against workman is as under.

A) Withdrawing on various dates varying sums of money from different Savings Bank Accounts of customers of the Bank's Igatpuri Branch by preparing forged withdrawals/forged signatures/Left Hand Thumb Impressions of the account holders, posting such withdrawal in the account of the customer, obtaining payments thereof from paying cashier, making fictitious credit entries in the accounts to facilitate such withdrawals, increasing the amount of withdrawals. The list of such instances / accounts has been mentioned in the Annexure to the Charge Sheet.

B) Issuing nine cheques on his own Saving Bank Account maintained at Igatpuri Branch for an amount aggregating to Rs.90,000/- in favour of his nephew (Shri Deepak Pawar) who had opened a Savings Bank Account with NMC Bank Ltd., accepting the cheques and initialing on the counterfoil of NMC Bank Ltd. which presented the cheques in question for payment, not entering the cheques in question in the Subsidiary Day Book and destroying the credit slips and accompanying cheques. Making bogus entries in the Pass Book of NMC Bank Ltd. and later on withdrawing the amount from his nephew's account opened with NMC Bank Ltd. Igatpuri Branch to which credit was given by the NMC Bank Ltd. on the strength of the entries made in their Pass Book.

C) Accepting credit slip of NDCC Bank Ltd., Igatpuri Branch along with cheque of Rs.696/- issued by him in favour of LIC, initialing the counterfoil of the NDCC Bank Ltd. but not entering the credit slip in the Subsidiary Day Book, keeping it in personal custody, making bogus entry in the Current Deposit (CD) Account Pass Book of NDCC Bank Ltd. Igatpuri Branch, on the strength of which the NDCC Bank Ltd. passed on the credit of Rs.696/- to LIC through Syndicate Bank.

4. The enquiry into the charges framed against the workman was conducted by Shri N.D. Tamhankar, Manager, SIB, Nasik who was appointed as Inquiry Officer. The enquiry was conducted ex-parte and the Inquiry Officer submitted his report. Defence Counsel of the concerned workman represented against the holding the said enquiry ex-parte and requested the disciplinary authority vide letter dated 11.1.1999 to treat the ex-parte enquiry as cancelled. Disciplinary authority ordered continuation of enquiry into the charges against the workman afresh and the decision of disciplinary authority was duly communicated vide letter dated 12.5.1999. Shri B.M. Gokhale was appointed as Inquiry Officer to conduct the enquiry. Inquiry officer thereafter conducted the enquiry into the charges leveled against the workman. The Inquiry Officer submitted the report dated 21.4.2003 in which he held as under.

a) As regards Charge No.1, it was proved in the respect of transactions detailed at serial Nos. 1 to 7, 9, 12 to 27 of the Annexure to the Charge Sheet. It was however held not proved as regards transactions mentioned at serial Nos. 8, 10 & 11 of the said Annexure. Since, the charge was established in respect of 24 out of 27 transactions listed in the Annexure, the EO held that the Charge No.1 stood proved.

b) Charge No. 2 was held proved.

c) Charge No. 3 was held proved.

5. The disciplinary authority agreed with the findings of the Inquiry Officer. The disciplinary authority proposed imposition of punishment of termination of service with 3 months pay and the allowances in lieu of notice in terms of clause 3 (c) of the Memorandum of Bipartite Settlement dated 10.4.2002 for each of the charges separately and distinctly. Accordingly show cause notice dated 7.6.2003 was issued to the workman and he was called upon to show cause within 7 days of the receipt of the notice as to why said punishment should not be inflicted upon him. The workman submitted his reply dated 18.7.2003 to show cause notice dated 7.6.2003. He also availed personal hearing on 9.7.2003. After considering all the aspects the disciplinary authority passed his final order dated 8.9.2003 in which he confirmed the penalty of termination of service proposed by him earlier and passed order imposing the punishment of termination of service with 3 months pay and allowances in lieu of notice in terms of clause 3 (c) of the Memorandum of Bipartite Settlement dated 10.4.2002. The workman preferred an appeal dated 3.11.2003 to the Appellate authority and the Appellate authority passed the order dated 11.6.2004 rejecting the said appeal.

6. It is the case of the workman concerned that the branch Manager is biased against him and on his report the charges are framed against him. The copies of the documents in which charges have been framed against him have not been supplied. The charge-sheet does not disclose the date or the time of alleged misconduct of the workman. The Branch manager Mr. Shah had exposed all bank's records to other staff members and the same was not given or shown to the concerned workman inspite of demanding the same vide Ex.DEX 73 and Ex.DEX 74. In the enquiry Branch Manager Mr. Shah PW-15 in his cross-examination has stated that he is not aware of the basis of the charge-sheet. He also stated during cross-examination that he is not in a position to tell the purpose of enquiry. In the criminal court Mr. Shah had deposed that the contents of FIR may not be true. In the enquiry none of the complainants have been examined. Even in the investigation report it is clearly mentioned that customers did not lodge complaints despite persuaded by the Branch Manager and the members of the staff. The workman was also not disclosed the findings of the

ex-parte enquiry held by the bank. The workman was honourably acquitted by the Criminal court on the evidence of same witnesses. Therefore the charges are baseless and issued with malafide intention.

7. It is also the case of a workman that the enquiry is held against the principles of natural justice. He was denied the opportunity to submit his explanation to the charge sheet. The enquiry is also vitiated on the point of delay in conducting the same. The documents called upon by him in the enquiry were not produced therefore the enquiry is against the principles of natural justice.

8. According to the workman he was honourably acquitted by the Criminal Court for the same alleged misconduct. He had produced the copy of criminal court's judgment when the enquiry was going on. He had requested the Inquiry officer and the disciplinary authority to cancel the enquiry since the charges are the same. However, the Inquiry officer proceeded with the enquiry stating that the workman was acquitted with benefit of doubt as such findings of the Inquiry officer are perverse.

9. According to the union, bank has held two enquiries for the same offence. First enquiry was held by Mr. Tamhankar and he has completed the enquiry and submitted his report to the disciplinary authority. Since Mr. Tamhankar has held ex-parte enquiry when the workman represented to the disciplinary authority against the ex-parte enquiry, bank set aside the earlier ex-parte enquiry and ordered the separate enquiry. There is no provision in Bipartite settlement to hold two enquiries for the same charges and on this ground the enquiry is vitiated.

10. It is also the case of a union that in the second enquiry after tutoring the prosecution witnesses the bank had improved the deposition of the prosecution witnesses to hold the workman guilty and even without proving the hand-writing and without producing the vouchers the findings are given by the Inquiry officer. As such findings are perverse and enquiry is also vitiated.

11. It is then the case of a union that the charge No. 2 & 3 are also not proved in the enquiry. With regard to charge No.2 there is no mention of date and time of the commission of alleged misconduct mentioned in the charges. The cheques referred to in charge No.2 were not in possession of workman. There is no other evidence led on this charge. Alleged confessional statement of the workman are taken by force and durance. Regarding third charge of filling of the cheque for Rs.696/-, the charge was not proved in the enquiry. To prove the charge, Presenting Officer had examined Shri J.B. Patil. Shri Patil lied before the Inquiry officer and his statement cannot be relied on. As such the findings of the Inquiry officer regarding these charges is also perverse. Union is therefore asking to hold that the departmental enquiry held against the workman is against the principles of natural justice and the findings of the Inquiry officer are perverse.

12. First party bank resisted statement of claim by filing the written statement (Ex.6). It is contended that when any suspected fraud comes to light at the branch then the bank Manager takes help of the staff members to confirm the same. It does not amount to exposing the records to the members of the staff since such regards may not have assumed the status of relevant records at that point of time. As such allegations of the bias leveled against the Branch Manager are baseless. It is then contended that there is no requirement to provide the copies of the documents at the stage of replying the show cause notice. The bank however supplied the relevant documents to the workman during the course of enquiry so that he could defend his case. No prejudice whatsoever has been caused to the workman.

13. It is also the case of bank that the criminal trial conducted in the court of Chief Judicial Magistrate, Nashik and the disciplinary proceedings initiated against the workman are two separate and distinct proceedings. The purpose, nature and standard thereof are distinct and different. This aspect has been dealt by the Inquiry officer and even in terms of awards / settlements the enquiry can be initiated / conducted in the cases of acquittal in the criminal cases also.

14. It is then contention of the first party bank that the workman strongly protested against the holding of ex-parte enquiry by Shri Tamhankar vide his letter dated 11.1.1999 addressed to disciplinary authority mentioning therein that the ex-parte enquiry held against him amounted to denial of reasonable opportunity to him and the same was voilative of principles of natural justice. Therefore, the disciplinary authority in order to afford more opportunity and fair proceedings ordered fresh enquiry and therefore ex-parte enquiry became non-est in the eyes of law. There was no question of furnishing copy of the Inquiry Officer's report of such but the same enquiry report is a matter of record. Therefore the enquiry does not vitiate.

15. It is contention that the workman had filed a regular civil suit in the court of CJJD Igatpuri seeking stay to the departmental proceedings during the pendency of criminal trial in the court of Judicial Magistrate, Nashik on the ground that it would be pre-judicial to his defence in criminal trial. He had also filed application for grant of temporary injunction against the holding of departmental enquiry. However, his application came to be rejected since he did make out prima-facie case. The workman even filed appeal in the court of Second Additional Dist. Judge, Nashik. The said appeal was also dismissed. In view of that the contention is that the concerned workman is benefitted by the delay in hearing of the departmental enquiry and no prejudice was caused to him. It is thus denied by the bank that the enquiry held against the workman was in violation of principles of natural justice. It is also denied that the enquiry is vitiated on account of delay in conducting the same.

16. It is contention of the bank that the Presenting Officer had provided the copies of documents and certified true copies of the same were made available to the workman for verification at the enquiry. The original were filed in the court of Magistrate in connection with the criminal proceedings. After the judgment in criminal case was pronounced the original documents became available and the same were produced for verification. Even the vouchers at Sr. No. 1, 2, 6, 7, 11 & 12 at Pg. 2 of the enquiry proceedings were not traceable and therefore the workman was not prejudiced on account of non-supply of vouchers in question. Even no prejudice was caused to the workman in respect of non supply of counter foils of pay & slips in NMC Bank ltd. since the original thereof were in the custody of NMC Bank Ltd.

17. It is then contention of the management that the aspect as regards committing mistakes in recognizing the hand writing of the staff members was dealt with by enquiry officer and it is made clear that the witnesses have recognized the hand writing of the workman so there is no perversity in findings of the Inquiry Officer. It is denied that the findings of the Inquiry Officer are perverse. It is thus case of the management that the enquiry into the charges leveled against the workman was conducted with scruples regard to the principles of natural justice and full opportunity was provided to the workman to establish his innocence. The findings of the Inquiry Officer are not perverse and hence the rejection of reference is sought for.

18. This tribunal by way of Award Part – I has held that Enquiry is fair and proper and the Findings of the Inquiry Officer are not perverse. Parties are directed to argue / lead evidence on the point of quantum of punishment.

19. Both the parties have not adduced any oral evidence. However, the concerned workman has filed written note of arguments Ex.46 and first party No.1 management has filed written note of arguments Ex.47. In view of that I reproduce the issue No. 2 to 4 along with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
2.	If yes, whether the punishment of removal from service is shockingly disproportionate ?	No
3.	If not, what relief the workman is entitled to ?	As per final order
4.	What order ?	As per final order

REASONS

Issue No.2:-

20. Learned Counsel for the concerned workman submitted that the tribunal has powers to reduce the punishment awarded to the workman. In the context he has placed reliance on the decision in case of **Workmen of M/s. Firestone Tire & Rubber Co. of India Pvt. Ltd. V/s. M/s. Firestone Tire & Rubber Co. of India Pvt. Ltd. – AIR – 1973 – SC – 1227**.

21. Submission is to the effect that the management while imposing the punishment ought to have considered the previous records, gravity of misconduct or extenuating or aggravating circumstances having found that the management did not take any of the relevant factors unto consideration, the tribunal in view of section 11 (a) is empowered to re-appreciate the evidence and examine the correctness of findings thereto. Even section 11 (a) further empowers courts to interfere with the punishment and alter the same.

22. However, in the instant case while passing the Award Part – I, the tribunal has arrived at the conclusion that the findings of the misconduct is based on evidence. Once the finding is based on some evidence, sufficiency of evidence in proof of finding lies beyond the scope of scrutiny of reviewing court.

23. As regards the scope of jurisdiction of the labour court u/s. 11 (a) of I.D. Act is concerned, as per fundamental principles, it is clear that jurisdiction of the labour court u/s. 11 (a) of I.D. Act is not unlimited. In the context reference is made to the decision in case of **Tata Infomedia Ltd. [erstwhile Tata Press Ltd.] V/S. Tata Press Employees' Union & Anr. – 2006 (108) – FLR 890.**

24. As such the section 11 (a) does not confer the arbitrary power on the Industrial Court or Labour court. The jurisdiction is supervisory in nature to be exercised where the finding of disciplinary enquiry is based on evidence. Where there has been transgression of principles of natural justice and where the finding is perverse in the sense that no reasonable body of the persons would have arrived at such a findings, then jurisdiction u/s. 11 (a) of I.D. Act can be exercised.

25. Here in the instant case the competent authority has considered the charges leveled against the workman as grave and serious and confirmed the penalty of dismissal from service. Obvious result of the charges being proved in the domestic enquiry held into charges framed against the workman is that of complete loss of confidence in the concerned workman.

26. In the decision in case of **Union Bank of India V/s. Vishwamohan – 1998 (4) – SCC – 310, it is observed in para – 12 of the judgment that**

> **"It needs to be emphasized that in the banking business, absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular the bank officer. If this is not observed, the confidence of the public / depositors would be impaired."**

27. Precisely it is submission of first party management that the concerned workman had withdrawn on various dates sums of money from different saving bank a/cs. of the customers of the banks, Igatpuri Branch by preparing forged withdrawals, forged signatures, left hand thumb impression of a/c. holders, posting such withdrawals in the a/c. of customer, obtaining the payment therefrom from the cashier, making fictitious credit entries in the a/cs. to facilitate such withdrawals, increasing the amount of withdrawals and as such the misconduct committed by the concerned workman amounted to financial irregularity. As such in case of financial irregularity there cannot be any other punishment than dismissal. He placed reliance on the decision in case of Municipal Committee, Bahadurgarh V/s. Krishna Bihari & Ors. – AIR – 1996 – SC – 1249.

28. The question is whether the punishment imposed upon the concerned employee is shockingly excessive or disproportionate to the gravity of proved misconduct. The concerned employee was holding the position of trust. He was dealing with public money or was engaged in financial transactions. Therefore while doing his duty the highest degree of integrity and trustworthiness is must. In such cases the loss of confidence in the employee will be an important and relevant factor. If employee is dishonest then he is not fit to continue in service.

29. In such circumstances the court would not interfere with the administrative decision unless it was illegal or suffered from procedural impropriety or irrational in the sense it was outrageous, defiance of logic and moral standards. It is held in the decision in case of **Domoh PannaSagar Rural Rational Bank &Ors V/S. Munnalal Jain CA No. 8258 of 2004 [SC]** that

> **"Unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed."**

30. Even then the Learned Counsel for the concerned workman submitted that the court of Judicial Magistrate, Nashik vide judgment dated 28.12.99 acquitted the concerned workman of the alleged offences on the observations in para – 11 of the judgment that there is no documentary evidence on record to show that the accused has forged signatures of the a/c. holders and the said withdrawal slips are checked from expert in this case. It was duty of the prosecution to file the report from expert in writing to show that the accused has committed forgery in respect of signatures of a/c. holders. As there is no expert evidence on record the accused cannot be held guilty of the said offences.

31. However, it is settled position of law that criminal trial and departmental enquiry stand on different footing altogether. In criminal trial the accused is tried for the offences in IPC and other statutes whereas in the departmental enquiry charges against the delinquent relate to breach of service rules. The standard of proof is different for criminal trial and departmental enquiry in as much as proof beyond shadow of doubt is required in the former, preponderance of probability is sufficient in case of latter. Therefore the acquittal in criminal case is not determinative of the commission of misconduct or otherwise.

32. Learned Counsel for the first party seeks to rely on the decision in case of Sought Bengal State Transport Corpn. V/s. Swapan Kumar Mitra – AIR – 2006 – SCW – 768 to submit that nature & scope of proof of criminal case is very different from that of departmental enquiry proceedings and the order of acquittal in the former cannot conclude the departmental proceedings.

33. Reliance is also placed on the decision in case of Avinash Sadashiv Bhosale [Dead] through LR V/s. Union of India – 2012 (13) – SCC – 142 to submit that the failure of prosecution in producing the necessary evidence before the trial court cannot have any adverse impact on evidentiary value of material produced by the bank before the E.O. in departmental proceedings.

34. In view of this legal position, acquittal of the workman by the Chief Judicial Magistrate, Nashik does not in any way affect the finding recorded by the EO which is based on evidence. As such limited judicial review is available to interfere with the punishment imposed by the disciplinary authority.

35. Considering all these facts and the legal position cited above, I find that punishment of removal from service by disciplinary authority on account of misconduct of the concerned workman cannot be said to be shockingly disproportionate. Considering the gravity of charges & scope of interference, punishment is imposed by the disciplinary authority, I find that the punishment imposed upon him is adequate to the misconduct. Issue No. 2 is therefore answered accordingly.

Issue No.3 & 4:-

36. In view of my findings to issue No.2 and Part – I Award, the workman is not entitled to any relief, so the reference is liable to be rejected with no order as to costs. Hence order.

ORDER

Reference is rejected with no order as to costs

Date: 23.08.2019

M. V. DESHPANDE, Presiding Officer

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